

ENTERED ON BOOK
MAR 19 1993

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE MAR 18 1993
NORTHERN DISTRICT OF OKLAHOMA

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

KENNETH R. MARSHALL,

Petitioner,

v.

EARL ALLEN,

Respondent.

91-C-214-E ✓

ORDER

This order pertains to Petitioner's Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (Docket # 1)¹ and Respondent's Response to Petition for Writ of Habeas Corpus (Docket #14).

Petitioner was convicted in Nowata County District Court, Case No. CRF-80-10, of first degree murder. Pursuant to a plea bargain, petitioner was sentenced to life imprisonment. Petitioner did not appeal. He now claims that he was incompetent to enter his plea.

In Wolf v. United States, 430 F.2d 443, 444 (10th Cir. 1970), the Tenth Circuit set out the test applicable to determine if one is competent: "[t]he test of mental competency at the time of trial or the entering of a plea in a criminal case is that the accused have 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding - and whether he has a rational as well as factual understanding of the proceedings against him.'" (citing Dusky v. United States, 362 U.S. 402, 402 (1960).

In King v. State, 553 P.2d 529, 533 (Okla. Crim. App. 1976), the court stated: "the

¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

trial court must first determine if the defendant is competent by interrogation of defense counsel and the defendant as to the defendant's past and present mental state as well as by observation of the defendant."

In his Reply to the Attorney General's Response to the Petition for Writ of Habeas Corpus (Docket #12), petitioner submitted medical records from Eastern State Hospital where he has been screened twice to determine his psychiatric condition. He was in the hospital for six days from November 29, 1979 to December 4, 1979 for detoxification and he was diagnosed as an alcoholic. After six days, his physical condition improved and he requested release. He was then sent to the hospital on January 23, 1980 for observation and testing after being charged with a murder which occurred on January 7, 1980. After a physical and psychological examination, he was found to be competent. The chief forensic psychiatrist concluded:

General appearance and behavior: He came to the interview with a smiling face, cooperative, pleasant, with no signs of aggression and hostility wearing his pajama garment. Affective responses were adequate, free from depressive mood. Speech was clear and spontaneous, speaking coherently, relevantly and cogently with no signs of mental blocking. Content of thought - he was free from delusional ideations, denied hallucinatory experiences, no preoccupation, no remorse. No obsessive thoughts, no definite abstract thinking difficulty. He related the story very vividly about the first degree murder charge and he is willing to cop out, plea bargain and reduce to second degree murder and may get ten years and be out in three years with good behavior. He was fully oriented in all three spheres to time, place and person. Memory was good for recent, remote and immediate recall. General intelligence dull average pending complete psychological evaluation. Reasoning power and judgment were not impaired. Insight clear and intact. There seems to be no treatable mental illness. He is completely sobered up.

Diagnostic Impression: Retained, alcohol addiction. Antisocial personality.

On February 15, 1980, petitioner pled guilty to first degree murder. The Transcript

("Tr") (Attachment to Response to Petition for Writ of Habeas Corpus (#14), reveals that the judge had the opportunity at the **plea hearing** to observe petitioner closely and to question him in great detail. Petitioner's **answers** were clear and responsive. The judge initially noted that:

"The preliminary hearing was set for the 30th of January, 1980. In the interim, the State filed a motion **and** obtained a subsequent order ordering this defendant committed to Eastern State Hospital for observation. He was shortly thereafter returned and it **was** found by the hospital that he was able to assist counsel in his own defense."

(Tr, p. 2).

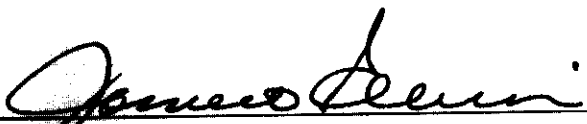
The court went to great lengths to **assure** that petitioner was mentally competent to plead guilty and that he understood **the** ramifications of his plea. (See Tr, pp. 3-19, Attachment "A").

Under the standards of Wolf v. United States and King v. State, discussed earlier, the court finds no basis for the petitioner's **claim** that the state court erred in failing to determine his competency at the time of **his** guilty plea.

Accordingly, the court finds that **the** petitioner was fully competent when he entered his plea of guilt. The court further **finds** no merit in petitioner's allegations that the sentencing was done "in a hurridly [sic] **manner**," and was "a sham, just enough to get by the minimum requirements" (Docket # 15).

IT IS THEREFORE ORDERED **THAT** petitioner's Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (**Docket #1**) is hereby denied and dismissed.

SO ORDERED this 18th day of March, 1993.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

1 preliminary hearing is?

2 THE DEFENDANT: (Kenneth R. Marshall) Yes, sir.

3 THE COURT: At that time it is incumbent upon the
4 State to submit enough information to the magistrate to
5 convince the magistrate that a crime has been committed and
6 that there is probable cause that you are the one who
7 committed that crime. If the State fails to do that, the
8 State would have to release you at that time. If the
9 magistrate is satisfied that a crime was committed and there
10 is probable cause that you committed it, he will bind you
11 over for trial. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: It is your own free will to waive the
14 preliminary hearing?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay, Mr. Marshall. You are appearing
17 here for formal arraignment at this time?

18 THE DEFENDANT: Yes.

19 THE COURT: First of all, I will ask you if you have
20 consulted your attorney fully about this case and the
21 matters now being presented to the Court?

22 THE DEFENDANT: Yes.

23 THE COURT: Has he explained to you the ramifications
24 and consequences of any action you might take at this
25 hearing?

1 THE DEFENDANT: Yes.

2 THE COURT: You understand you have a right to a
3 continuance of this case for at least twenty-four hours or
4 to another date to give you an opportunity to fully discuss
5 this case with your attorney?

6 THE DEFENDANT: Yes.

7 THE COURT: How old are you?

8 THE DEFENDANT: Twenty-four.

9 THE COURT: How much education have you had?

10 THE DEFENDANT: High school diploma.

11 THE COURT: You did graduate from high school?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you have any college?

14 THE DEFENDANT: No, sir.

15 THE COURT: Is this name stated in the Information
16 your true and correct name?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand what is charged against
19 you by the State in the Information filed herein, that is,
20 the crime of Murder in the First Degree?

21 THE DEFENDANT: Yes.

22 THE COURT: Has the district attorney furnished you
23 a copy of the Information with a list of witnesses to be
24 called by the State of Oklahoma, together with their post
25 office addresses?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that unless waived, you
3 are entitled to have the Information read to you?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you wish to have it read to you?

6 THE DEFENDANT: No, sir.

7 THE COURT: Do you understand you are entitled to tak
8 twenty-four hours before entering any plea to the charge
9 contained herein?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you waive your right to take twenty-four
12 hours within which to plea?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you desire to enter a plea on this
15 date?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Before I can accept your plea I must
18 advise you that the punishment for the crime of first degree
19 murder, either upon a plea or upon a verdict by a jury would
20 be a minimum of life imprisonment and the maximum, of course,
21 is death. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: You are fully cognizant of what that means

24 THE DEFENDANT: Yes.

25 THE COURT: With that understanding, how do you plead,

1 guilty or not guilty to the crime of Murder in the First
2 Degree?

3 THE DEFENDANT: Guilty.

4 THE COURT: Before I will accept that, there are some
5 other questions I will have to ask you. Do you understand
6 you have the right to be tried by a jury?

7 THE DEFENDANT: Yes.

8 THE COURT: You have the right to be confronted by
9 witnesses who will testify against you.

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand you cannot be compelled
12 to testify against yourself but you have a privilege against
13 self-incrimination guaranteed under the Fifth Amendment?

14 THE DEFENDANT: Yes.

15 THE COURT: I will ask you if this plea of guilty you
16 are entering to this Information is freely, understandingly
17 and voluntarily given?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you taken any medication or drugs
20 or consumed any substance in the last twenty-four hours which
21 affects your mental ability to understand these proceedings?

22 THE DEFENDANT: No.

23 THE COURT: Have you ever been under the care of a
24 psychiatrist or committed to a mental institution?

25 THE DEFENDANT: No.

1 THE COURT: Other than the time the State sent you
2 over there.

3 THE DEFENDANT: Right.

4 THE COURT: You are now represented and have been
5 represented by what attorney?

6 THE DEFENDANT: Loy Davis.

7 THE COURT: Are you entirely satisfied with Mr. Davis'
8 representation of you in this case?

9 THE DEFENDANT: Yes.

10 THE COURT: Have you fully conferred with him on this?

11 THE DEFENDANT: Yes.

12 THE COURT: Has he told you what he thinks you ought
13 to do?

14 THE DEFENDANT: Yes.

15 THE COURT: Does he think you ought to plead guilty,
16 or not guilty?

17 THE DEFENDANT: It was up to me.

18 THE COURT: He left it up to you to decide?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Has there been any undue influence,
21 compulsion or duress on the part of the district attorney,
22 the sheriff or any other officer of this court, or any person
23 to induce you to enter a plea of guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you pleading guilty because you

1 confessed to this crime?

2 THE DEFENDANT: Yes.

3 THE COURT: Prior to your confession had you been
4 advised of your right to remain silent and to have an attorney
5 present with you at every stage of this proceedings?

6 THE DEFENDANT: Yes.

7 THE COURT: That anything you said could be used
8 against you in a court of law?

9 THE DEFENDANT: Yes.

10 THE COURT: You were advised of that before you
11 confessed?

12 THE DEFENDANT: Yes.

13 THE COURT: Has anyone made any promises to you to
14 induce you to enter a plea of guilty?

15 THE DEFENDANT: No.

16 THE COURT: Are you pleading guilty to the charge
17 because you are guilty of this crime?

18 THE DEFENDANT: Yes.

19 THE COURT: You are telling the Court that you did
20 commit the crime of partaking in this crime?

21 THE DEFENDANT: Yes.

22 THE COURT: 'Are you fully aware that upon a plea of
23 guilty you are subject to be punished for the crime charged
24 in the Information and the punishment provided by statute for
25 the crime charged is a minimum of life imprisonment and a

1 maximum of life?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that the Court is not
4 bound by any recommendations made by the district attorney
5 or any agreement entered into by you and your attorney with
6 the district attorney, but may sentence you within the limits
7 of the minimum and maximum sentences provided by law?

8 THE DEFENDANT: Yes.

9 THE COURT: You understand...I will ask you again...
10 You are entitled to be tried by a jury and it would be
11 necessary for the State to prove to the satisfaction of a
12 jury that you are guilty and if it is not proven to a jury
13 beyond a reasonable doubt that you are guilty, the jury
14 would find you not guilty. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you desire to be tried by a jury or do
17 you waive that right?

18 THE DEFENDANT: Waive it.

19 THE COURT: You desire to enter a plea of guilty?

20 THE DEFENDANT: Yes.

21 THE COURT: Taking into consideration all the questions
22 I have asked you, do you still enter a plea of guilty in this
23 case?

24 THE DEFENDANT: Yes.

25 THE COURT: You have a full understanding of what the

1 consequences are?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you expressly waive all the rights of
4 which you have herein been advised?

5 THE DEFENDANT: Yes.

6 THE COURT: Mr. Davis, do you feel this man has a full
7 understanding of what he is doing?

8 MR. DAVIS: Yes, Your Honor, he fully understands.
9 With the Court's permission I would like to inquire. Mr.
10 Marshall, you and I have met on numerous occasions have we
11 not, concerning this crime?

12 THE DEFENDANT: Yes.

13 MR. DAVIS: We have discussed any possible defenses
14 that might be raised in this matter; is this correct?

15 THE DEFENDANT: Yes.

16 MR. DAVIS: I have explained fully to you that we
17 would, to the best of our ability, try the case if you so
18 desired?

19 THE DEFENDANT: Yes.

20 MR. DAVIS: I have explained to you who the witnesses
21 are in this case?

22 THE DEFENDANT: Yes, sir.

23 MR. DAVIS: I also explained to you what alternatives
24 a jury might have if you elected to be tried by a jury and
25 if the jury found you guilty of the crime of first degree

1 murder or some lesser and included offense?

2 THE DEFENDANT: Yes, sir.

3 MR. DAVIS: Have you been fully satisfied with the
4 representation that I have given you?

5 THE DEFENDANT: Yes, sir.

6 MR. DAVIS: You are an indigent, are you not...You
7 don't have funds available to pay an attorney?

8 THE DEFENDANT: Yes.

9 MR. DAVIS: I explained to you that at the State's
10 expense we could prepare a defense for this trial?

11 THE DEFENDANT: Yes.

12 MR. DAVIS: You are entering this plea freely and
13 voluntarily?

14 THE DEFENDANT: Yes.

15 MR. DAVIS: We have discussed fully any ramifications
16 of this plea; is this correct?

17 THE DEFENDANT: Yes.

18 MR. DAVIS: Still you desire to enter a plea of guilty?

19 THE DEFENDANT: Yes.

20 MR. DAVIS: Have I said anything to you or anybody on
21 behalf of the district attorney's office said anything to you
22 that might induce you to enter this plea?

23 THE DEFENDANT: No.

24 THE COURT: Let the record show that the Court accepts
25 the tendered plea of guilty.

1 MR. LANNING: I have a few questions I would like to
2 ask. I want to specifically ask, it has been covered general
3 by the Court and Mr. Davis, but at this time does the Court
4 believe and is the Court satisfied that at this time he
5 understands this proceedings and the nature of this proceed-
6 ings and if the Court has no qualms about his entering his
7 plea?

8 THE COURT: Go ahead.

9 MR. DAVIS: Do you fully understand what you are
10 doing here today...Do you fully understand it?

11 THE DEFENDANT: Yes, sir.

12 MR. DAVIS: Is there anything that you know of that
13 you could tell the Court or Mr. Lanning or Mr. Lieb that
14 would in any way shed any light on this, other than a
15 voluntary plea?

16 THE DEFENDANT: No, sir.

17 MR. LANNING: Are you satisfied today that he has
18 voluntarily entered his plea factually and as to his mental
19 condition at this time?

20 MR. DAVIS: I am satisfied as to his mental condition
21 at this time.

22 MR. LANNING: We would also ask in regard to the
23 alleged offense was committed on January 6, 1980, if both Mr.
24 Marshall and Mr. Davis are satisfied that at that time Mr.
25 Marshall understood that the acts he was doing were wrong

1 and his mental state was such that he fully understood the
2 gravity of his acts.

3 THE COURT: At the time you committed the act were
4 you aware of what you were doing and the probable conse-
5 quences of that act?

6 THE DEFENDANT: I don't know how to answer that.

7 THE COURT: Did you realize what you were doing?

8 THE DEFENDANT: Part of the time.

9 THE COURT: At the time you committed the actual act
10 did you know that was wrong?

11 THE DEFENDANT: After I done it, yes.

12 MR. LANNING: I believe the facts were that the
13 victim was shot six times in the head. I think it is
14 necessary to inquire if at the time that was done by this
15 defendant, did he know that act was wrong...at the time he
16 did that.

17 MR. DAVIS: I disagree with that particular question.
18 To say the least you are drawing a conclusion, that as he
19 pulled the trigger you are asking what his mental state was
20 at that very time...Did he know it was wrong at the time he
21 did it. You are getting into the facts of the case.

22 THE COURT: Do you know it is wrong to shoot somebody?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you knew that at the time you shot him?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You knew when you shot him that you were
2 doing wrong?

3 THE DEFENDANT: Yes.

4 AMR. LANNING: At the time you shot him you intended
5 to kill him, did you not?

6 THE DEFENDANT: I don't know why I shot six times. I
7 don't know what I intended to do.

8 MR. LANNING: What part of the head did you shoot him
9 in?

10 THE DEFENDANT: I couldn't see it.

11 MR. LANNING: You knew you were shooting him in the
12 head, did you not?

13 THE DEFENDANT: I wasn't for sure.

14 MR. LANNING: Did you not know that was the conse-
15 quence of where you were pointing the gun at the victim, that
16 he was most likely dead, having shot that many times?

17 THE DEFENDANT: Yes, sir, I assumed that.

18 MR. DAVIS: If it please the Court, I object to that
19 line of questioning. Again, I have gone over his possible
20 defenses with him.

21 MR. LANNING: The Court has to satisfy itself that
22 there is a factual basis for believing there was a premedi-
23 tated attempt to kill in this case. Of course he is not a
24 doctor and he doesn't know the exact ramifications, but the
25 ramifications that a person of ordinary knowledge would have

1 of firing a pistol at point-blank range would have a logical
2 consequence of death.

3 MR. DAVIS: You can ask him a hypothetical question.
4 I see no point in getting into what actually happened at the
5 time.

6 MR. LANNING: The Court has to satisfy itself that
7 there is a factual basis for accepting a plea in first degree
8 murder.

9 MR. DAVIS: By the questions of the Court of a general
10 nature we have determined that he has confessed. Bear in
11 mind, Your Honor, this has been discussed fully with him, he
12 understands the full ramifications of his plea. If he
13 desires to withdraw his plea and go to trial, the State is
14 ready to go to trial with him. A hypothetical question, if
15 you point a gun at somebody and fired six times, would you
16 expect to kill him, that's something else. To go into the
17 state of mind at the time it happened, I feel is totally
18 irrelevant.

19 THE COURT: Well, first degree murder is premeditated.
20 We have to know whether or not he intended to kill him. I
21 assume if he shot six times into the head, he intended to
22 kill him, but we need to know if it was premeditated,
23 accidental or what. Did you intend to kill?

24 THE DEFENDANT: I guess I did.

25 THE COURT: You guess so or you know so?

1 THE DEFENDANT: I guess so.

2 THE COURT: I guess so...I am not sure that is going
3 to get it. Mr. Lanning, are you through with your questions?

4 MR. LANNING: Mr. Marshall, you were aware, were you
5 not, that you fired a gun numerous times at the victim?

6 THE DEFENDANT: Yes.

7 MR. LANNING: I believe at the time that you were
8 straddle the victim, on top of him; is that the general
9 position?

10 THE DEFENDANT: Yes.

11 MR. LANNING: What kind of gun did you use?

12 THE DEFENDANT: 22 revolver.

13 MR. LANNING: Do you know how many shells, bullets,
14 this particular pistol holds?

15 THE DEFENDANT: Six.

16 MR. LANNING: As I understand it, you were the only
17 one that actually pulled the trigger while it was pointed at
18 the victim; is this true?

19 THE DEFENDANT: Yes.

20 AMR. LANNING: What was the victim's name?

21 THE DEFENDANT: Tom Tevebaugh.

22 MR. LANNING: At the time that you were pointing the
23 gun at him he had no pistol or weapon, did he?

24 THE DEFENDANT: No, sir.

25 MR. LANNING: Such that you were in immediate danger

1 to your life?

2 THE DEFENDANT: No, sir.

3 MR. LANNING: Did you...You knew, did you not, that
4 the pistol was pointed in the head area of the victim?

5 THE DEFENDANT: Yes.

6 MR. LANNING: You did realize at the time that you
7 were shooting more than one, more than two times?

8 THE DEFENDANT: Yes, sir.

9 MR. LANNING: Did you not assume that you were taking
10 the life of the victim, that that was the expected consequence
11 of your pulling the trigger numerous times?

12 THE DEFENDANT: Yes.

13 MR. LANNING: Do you understand that if the case was
14 to go to trial that you could testify if you wanted to or
15 you wouldn't have to if you didn't want to?

16 THE DEFENDANT: Yes, sir.

17 MR. LANNING: That would be your choice. Mr. Davis
18 would consult with you about that but you would testify if
19 you wanted to and could decline if you wanted to.

20 THE DEFENDANT: Yes, sir, I understand.

21 MR. LANNING: Is there anything about the penalty
22 involving life or the possibility of death, if the State
23 listed certain requirements...does that have anything to do
24 with what you have told this court about how this happened...
25 That you are admitting guilt, that you did do the acts you

1 are charged with?

2 THE DEFENDANT: I don't understand what you asked.

3 MR. LANNING: In other words, I believe the State has
4 told you that it did not intend to request the Court to
5 impose the death penalty, that it was going to ask the Court
6 to impose a life sentence in the penitentiary.

7 THE DEFENDANT: Yes, I understand that.

8 MR. LANNING: Regardless of whether you are facing
9 life or death, did you do the acts that you are charged with
10 not just because you are facing the possibility of a death
11 penalty?

12 THE DEFENDANT: Yes, sir, I did.

13 MR. LANNING: Your answer would be the same either way

14 THE DEFENDANT: Yes, sir.

15 MR. LANNING: I believe the Court asked you if you had
16 read the Information and understood exactly what you are
17 charged with...All the things set out in the Information are
18 true and accurate?

19 THE DEFENDANT: Yes, sir.

20 MR. LANNING: Does the Court find both as to his
21 mental condition today on the act and also as to a factual
22 basis for his plea?

23 THE COURT: He seems to have answered the questions
24 promptly and intelligently. He acknowledged that he knew what
25 he was doing and that he entered his plea of guilty

1 voluntarily and knowingly and there is a factual basis for
2 believing that he did commit the act as he stated he did.
3 I find a factual basis for believing he did commit the act.

4 MR. LANNING: Do you find that there was the
5 necessary intent to kill in this case? Have we presented
6 sufficient facts for the Court to make that finding?

7 THE COURT: I believe there were. Six shots certainly
8 show there was an intent to kill.

9 MR. LANNING: That's all the additional questions I
10 have.

11 THE COURT: This being a felony, we probably should
12 have a pre-sentence investigation before proceedings with the
13 sentence.

14 MR. LANNING: We have prepared a waiver and tendered
15 it to Mr. Davis to discuss that with his client.

16 MR. DAVIS: Your Honor, I have discussed this previous
17 with my client, that he is afforded the right to have a pre-
18 sentence investigation report filed in this Court. He
19 understands the consequence of his act and he informed me
20 yesterday, and I would like to inquire of him that he would
21 desire to waive this presentence investigation. Mr. Marshall
22 you are aware that under the laws of the State of Oklahoma
23 you are entitled to a pre-sentence investigation report, to
24 be conducted by the Department of Corrections, that could or
25 could not, depending on the case, tend to mitigate the

ENTERED ON DOCKET
DATE **MAR 19 1993**

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

KENNETH E. STEPHENS; SUE A.
STEPHENS a/k/a SUE A. JONES;
DORTHA M. STEPHENS; COUNTY
TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

MAR 18 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 92-C-543-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 18 day
of March 1993. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Wyn Dee Baker, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, Kenneth E.
Stephens, Sue A. Stephens a/k/a Sue A. Jones, and Dortha M.
Stephens, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, Dortha M. Stephens,
acknowledged receipt of Summons and Complaint on October 6, 1992;
that the Defendant, County Treasurer, Tulsa County, Oklahoma,
acknowledged receipt of Summons and Complaint on June 25, 1992;

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FOR CLERK'S OFFICE
UPON RECEIPT

and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 24, 1992.

The Court further finds that the Defendants, Kenneth E. Stephens and Sue A. Stephens a/k/a Sue A. Jones, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning December 3, 1992, and continuing through January 7, 1993, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Kenneth E. Stephens and Sue A. Stephens a/k/a Sue A. Jones, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Kenneth E. Stephens and Sue A. Stephens a/k/a Sue A. Jones. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together

with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers July 14, 1992; that the Defendants, Kenneth E. Stephens, Sue A. Stephens a/k/a Sue A. Jones, and Dortha M. Stephens, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Nine (9), Block Six (6), LAKE-VIEW HEIGHTS
AMENDED ADDITION to the City of Tulsa, County
of Tulsa, State of Oklahoma, according to the
recorded Plat thereof.

The Court further finds that on July 13, 1973, Kenneth E. Stephens and Sue A. Stephens executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$9,500.00, payable in monthly installments, with interest thereon at the rate of four and one-half percent (4.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Kenneth E. Stephens and Sue A. Stephens executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated July 13, 1973, covering the above-described property. Said mortgage was recorded on July 16, 1973, in Book 4078, Page 2156, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Kenneth E. Stephens and Sue A. Stephens a/k/a Sue A. Jones, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Kenneth E. Stephens and Sue A. Stephens a/k/a Sue A. Jones, are indebted to the Plaintiff in the principal sum of \$5,430.30, plus interest at the rate of 4.5 percent per annum from May 1, 1991 until judgment, plus interest thereafter at the legal rate until

fully paid, and the costs of this action in the amount of \$243.10 for publication fees.

The Court further finds that the Defendant, Dortha M. Stephens, is in default and has no right, title or interest in the subject real property.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Kenneth E. Stephens and Sue A. Stephens a/k/a Sue A. Jones, in the principal sum of \$5,430.30, plus interest at the rate of 4.5 percent per annum from May 1, 1991 until judgment, plus interest thereafter at the current legal rate of 3.21 percent per annum until paid, plus the costs of this action in the amount of \$243.10 for publication fees, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Dortha M. Stephens and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Kenneth E. Stephens and Sue A. Stephens a/k/a Sue A. Jones, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

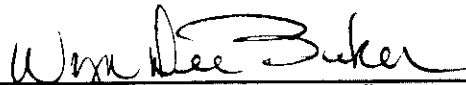
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


BY JAMES D. ELISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


WYN DEE BAKER, OBA #465
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, OK 74103
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 92-C-543-E

WDB/css

MAR 19 1993

DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**FILED**

MAR 18 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMABURDETTE BLUE, III and
BARBARA W. BLUE, husband
and wife,

Plaintiffs,

vs.

Case No. 93-~~X~~-0157 BSTATE FARM FIRE AND
CASUALTY COMPANY,
an Illinois

Defendant.

ORDER

This matter comes on for hearing on this 18th day of March, 1993, upon the Joint Application of Plaintiff and Defendant to remand this case to the District Court of Tulsa County, State of Oklahoma.

The Court after having an opportunity to examine the file and being fully advised herein, finds that the parties have agreed that this Court lacks original jurisdiction because the amount in controversy does not exceed the sum of \$50,000.00 exclusive of interest and costs and that as a result of same this case should be remanded to the District Court for Tulsa County, State of Oklahoma.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above entitled action is hereby remanded to the District Court of Tulsa County, State of Oklahoma.


DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

RICHARD LEE JOHNSON,
Petitioner,

vs.

RON CHAMPION,
Respondent.

No. 93-C-207-B

FILED

MAR 18 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

EOO 3/18/93

Now before the court is Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. It has come to the court's attention that Petitioner was convicted in Cherokee County, Oklahoma, which is located within the territorial jurisdiction of the Eastern District of Oklahoma. Therefore, in the furtherance of justice, this matter may be more appropriately addressed in that district.

Accordingly, pursuant to 28 U.S.C. § 2241(d), Petitioner's application for a writ of habeas corpus is hereby transferred to the Eastern District of Oklahoma for all further proceedings.

IT IS SO ORDERED this 15th day of Mar-, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LARON ROBINSON,
Petitioner,

vs.

RON CHAMPION,
Respondent.

No. 93-C-196-B

FILED

MAR 18 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

EOO 3/18/93

Now before the court is Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. It has come to the court's attention that Petitioner was convicted in Okmulgee County, Oklahoma, which is located within the territorial jurisdiction of the Eastern District of Oklahoma. Therefore, in the furtherance of justice, this matter may be more appropriately addressed in that district.

Accordingly, pursuant to 28 U.S.C. § 2241(d), Petitioner's application for a writ of habeas corpus is hereby transferred to the Eastern District of Oklahoma for all further proceedings.

IT IS SO ORDERED this 15th day of Mar., 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 17 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM,
INC., an Oklahoma
corporation,

Plaintiff,

vs.

BROWN FLIGHT RENTAL ONE
CORP., a foreign corporation;
and RICHARD BROWN, an
individual,

Defendants.

Case No. 91-C-993-B

92-C-245-B

EDD 3/18/93

J U D G M E N T

In accordance with the jury verdict rendered March 16, 1993, Judgment is hereby entered in favor of Plaintiff Thrifty Rent-A-Car System, Inc. and against Defendants, Brown Flight Rental One Corp. and Richard Brown, on Thrifty's breach of contract claims in the amount of One Million Nine Hundred Fifty Six Thousand Three Hundred Forty Four Dollars and Fifty Four Cents (\$1,956,344.54) plus pre-judgment interest at the annual rate of 6% (15 O.S. § 266) from December 26, 1991, until paid and in favor of Plaintiff Thrifty Rent-A-Car System, Inc. and against Defendant Brown Flight Rental One Corp. on Thrifty's conversion claims in the amount of Three Hundred Ninety One Thousand Four Hundred Ten Dollars and Ninety Five Cents (\$391,410.95), plus post-judgment interest on said latter sum at the annual rate of 3.21% from the date hereon until paid.

Further, Judgment is hereby entered in favor of Richard Brown

121 / 6

C/C.D.

and against Thrifty Rent-A-Car System, Inc. on Thrifty's conversion claims for actual and punitive damages and in favor of Brown Flight Rental One Corp. and against Thrifty Rent-A-Car System, Inc. on Thrifty's conversion claims for punitive damages.

Costs are assessed against Defendants, Brown Flight Rental One Corp. and Richard Brown, if timely applied for under Local Rule 6. Any attorney fees claimed will be considered under Local Rule 6.

DATED this 17 day of March, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE MAR 18 1993IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMAUNITED VIDEO, Inc.,
a Delaware corporation,*Plaintiff,**versus*J. WELDON GRANGER, *et ux.*,
citizens of Texas,

and

OMEGA TELECOMMUNICATIONS, Inc.,
a Texas corporation,*Defendants.*

No. 87-C-370-E

FILED

MAR 18 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMAConsolidated with No. 88-C-1644-E
[Formerly S.D.Tex., No. H-87-987]**ORDER OF MUTUAL DISMISSAL WITH PREJUDICE**

NOW, on this 17th day of March, 1992, comes on for consideration the Motions to Dismiss with Prejudice filed by all **Parties** hereto pursuant to the Settlement Agreement heretofore filed herein.

In consideration whereof, the Court finds that all claims, counterclaims, and other prayers in the above-styled consolidated cases by Mr. J. Weldon Granger *et ux.*, and Omega Telecommunications, Inc., deriving from and/or relating to U.S. Letters Patent 3,956,579, 4,199,781, and/or 4,203,130, should be and hereby are Dismissed with Prejudice against United Video, Inc., and against any or all of United Video's heirs, successors and assigns, and parent, subsidiary and related corporations and/or entities, and/or any or all of United Video's past, present or future mediate or immediate customers, subscribers and/or viewers of the "Electronic Program Guide"* and related services, and of the technology underlying same. AND FURTHER, that all claims, counterclaims, and other prayers in the above-styled consolidated cases by United Video, Inc., deriving from and/or relating to U.S. Letters Patent 3,956,579, 4,199,781, and/or 4,203,130, should be and hereby are Dismissed with Prejudice against Mr. and Mrs. J. Weldon Granger and Omega Telecommunications, Inc.


It is further ordered that the Clerk for the U.S. District Court for the Northern District of Oklahoma shall remove from the public Court file in Case No. 87-C-370-E, and maintain under seal, Exhibit 6 (being the document titled "United Video EPG Broadcast System – System Design," dated July 25, 1986) to the Affidavit of Dr. Scott Marks, tendered on March 12, 1991, as part of (#99) Omega Telecommunications' "Supplemental Response to United Video's First Motion for Partial Summary Judgment (Non-Infringement)," and filed formally of record on June 18, 1991 (#127); and on May 14, 1997, either destroy that document, or return it to United Video, Inc.

Notwithstanding this Mutual Dismissal with Prejudice, the Court finds that it may and shall retain a continuing jurisdiction and venue herein over the Parties hereto for the limited purpose of the judicial resolution of such disputes as may hereafter arise over the interpretation and enforcement of the Settlement Agreement herein, and the papers and actions relating thereto.

IT IS SO ORDERED, this 17th day of March, 1992.


JAMES O. ELLISON
Chief United States District Judge

APPROVED:


MICHAEL T. McLEMORE
Counsel for Mr. and Mrs. J. Weldon Granger
and for
Omega Telecommunications, Inc.


FRED P. GILBERT
Counsel for United Video, Inc.

DATE MAR 18 1993

FILED

MAR 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARK WHATLEY,

Plaintiff,

vs.

Case No. 92-C-719 B ✓

CITY OF BARTLESVILLE,
OKLAHOMA, a Municipal
Corporation; THOMAS R.
HOLLAND, Chief of Police,
City of Bartlesville; ROBERT
METZINGER, Bartlesville City
Manager; JERRY M. MADDUX,
Bartlesville City Attorney;
and JANICE LINVILLE,
Bartlesville Director of
Personnel; CAPTAIN JOHN
EVANS, Bartlesville Police
Department, and DOES 1 - 25,
inclusive,

Defendants.

FILED

MAR 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

GRANTING DEFENDANTS'

**THOMAS R. HOLLAND, ROBERT METZINGER, JERRY M. MADDUX,
JANICE LINVILLE, AND JOHN EVANS', MOTION FOR SUMMARY JUDGMENT**

Upon Application of Defendants, THOMAS R. HOLLAND, ROBERT METZINGER, JERRY M. MADDUX, JANICE LINVILLE, AND JOHN EVANS, requesting that this Court enter an Order granting these Defendants' Motion For Summary Judgment, this Court FINDS as follows:

1. That on January 15, 1993 these Defendants filed, along with other motions, "Defendants' Motion To Dismiss Or, In The Alternative, Defendants' Motion For Summary Judgment" (hereinafter "Defendants' Motion"); and

2. That on January 15, 1993, these Defendants submitted to the Court Clerk for filing "Defendants' Brief In Support Of Motion

To Dismiss, Or In The Alternative, In Support Of Motion For Summary Judgment" (hereinafter "Defendants' Brief");¹ and

3. That Plaintiff acknowledges that on January 15, 1993, Defendants' counsel hand-delivered to Plaintiff's counsel a copy of Defendants' Motion and Defendants' Brief; and

4. That at the January 15, 1993 the Magistrate Judge ordered, pursuant to an agreement reached between the Parties and the Magistrate, that the issues presented in Defendants' Motion and Brief would be bifurcated, and Plaintiff was ordered to respond initially only to the qualified immunity defense raised by the individual defendants in Defendants' Motion and Brief, and a written Order setting forth the determination of the hearing was filed on January 25, 1993; and

5. That on February 10, 1993 Plaintiff filed his request for an extension of time from February 1, 1993 until February 16, 1993.

6. That Plaintiff did not file any response or objection to Defendants' Motion on or before February 16, 1993; and

7. That Local Rule 15 for the United States District Court for the Northern District of Oklahoma states, in relevant part:

Memoranda in opposition to such motion and objection shall be filed within fifteen (15) days in a civil case, Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings.

8. That Plaintiff has failed to comply with Rule 15.


¹ The Brief, which exceeds 25 pages, was actually file-stamped on January 27, 1993, when this Court signed the Order allowing Defendants to file a Brief in excess of 25 pages.

THEREFORE, this Court FINDS that Plaintiff has waived any objection to these Defendants' motion for summary judgment premised on their defense of qualified immunity and that Plaintiff is deemed to have confessed the matters raised by Defendants with regard to qualified immunity.

FURTHERMORE, upon this Court's review and consideration of the undisputed material facts, argument and authorities presented in Defendants' Brief In Support Of Motion To Dismiss, Or In The Alternative, In Support Of Motion For Summary Judgment, this Court FINDS that the individual defendants, THOMAS R. HOLLAND, ROBERT METZINGER, JERRY M. MADDUX, JANICE LINVILLE, AND JOHN EVANS, are entitled to qualified immunity from suit on all claims set forth in Plaintiff's Second Amended Complaint.

THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants, THOMAS R. HOLLAND, ROBERT METZINGER, JERRY M. MADDUX, JANICE LINVILLE, AND JOHN EVANS, are GRANTED SUMMARY JUDGMENT, and they are DISMISSED as Defendants in the above-styled action.

DATED this 16th day of ~~February~~ ^{MARCH}, 1993.


The Honorable Thomas R. Brett,
United States District Court Judge

ENTERED ON DOCKET

MAR 18 1993

DATE

FILED

MAR 17 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JACK HANNA,

Plaintiff,

v.

BLUE CIRCLE CEMENT, INC.,

Defendant.

CASE NO. 92-C-1142-B

ORDER

This matter comes on for consideration of Plaintiff Jack Hanna's Motion To Remand (#2).

In a Petition filed in the District Court for Tulsa County, State of Oklahoma, Plaintiff Jack Hanna (Hanna) alleges a claim for retaliatory discharge arising under the Worker's Compensation Act of Oklahoma. Defendant Blue Circle Cement Inc. (Blue Circle) removed the matter to this Court based upon diversity jurisdiction.

Hanna alleges the action was improvidently removed because of the strictures of 28 U.S.C. § 1445(c), which provides:

"A civil action in any state court arising under the workers' compensation laws of such state may not be removed to any district court of the United States."

Hanna further argues that several federal district courts, including one in the Western District of Oklahoma, have specifically ruled that § 1445(c) bars removal of a claim for retaliatory discharge because the same arises under the workers'

compensation law. See, Kemp v. Dayton Tire & Rubber Co., 435 F.Supp. 1062 (W.D.Okl.1977); Roberts v. Citicorp Diners Club, 597 F.Supp. 311 (D.C.MD 1984); and Alexander v. Westinghouse, 612 F.Supp. 1118 (N.D.Ill.1985).

In counterpoint, Blue Circle avers Kemp and its ilk depend upon the varying language of state workers' compensation laws; that Kemp in particular ignores significant Oklahoma Supreme Court decisions bearing upon the rationale of such cursory view. Blue Circle cites WRG Construction Co. v. Hoebe, 600 P.2d 334 (Okl.1979), which holds that actions for retaliatory discharge brought pursuant to Title 85 O.S. Ann. §§ 5-7¹, can only be brought in the District Courts of the State of Oklahoma and never in the Workers' Compensation Court; that the legislative language which created the remedy makes such remedy collateral rather than incidental to that available in the Workers' Compensation Court.

Further, Blue Circle argues it was legislative intent to make such actions stand separate and apart from the remedies accorded employees injured on the job, citing Thompson v. Medley Material Handling, Inc., 732 P.2d 461, 463 (Okl.1987).

Blue Circle also cites a medley of Texas federal district cases for the proposition there has been a departure of other jurisdictions from the cursory holding that workers' retaliatory discharge torts are to be denied federal jurisdiction. Chatman v. Saks Fifth Ave. of Texas, Inc., 762 F.Supp. 152 (S.D.Tex.1991);

¹ The Oklahoma Retaliatory Discharge Act, Title 85 O.S. Ann. §§ 5-7, as amended.

Richardson v. Owens-Illinois Class Container, Inc., 698 F.Supp. 673 (W.D.Tex.1988); Nabors v. City of Arlington, Tex., 688 F.Supp. 1165 (E.D.Tex.1988).

Blue Circle's departure cases have not stood the test of time. Jones v. Roadway Exp. Inc., 931 F.2d 1086 (5th Cir.(Tex)1991) declined to validate either Chatman or Richardson, holding that a claim which "arose under" the workers' compensation laws of Texas could not be removed to federal district court. Nabors was also not followed by a fellow district court in Texas. Cedillo v. Valcar Enterprises & Darling Delaware Co., Inc., 773 F.Supp. 932 (N.D.Tex.1991).

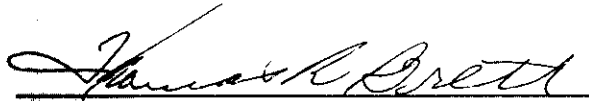
Further, this Court, on an earlier occasion, embraced Kemp without hesitation. Thompson v. Blue Circle, Inc., No. 84-C-79-E, D.C.N.D.Okl.1984), specifically holding that a retaliatory discharge action under 85 O.S. §§ 5,6 & 7, is one "arising under the workman's compensation laws" of the State of Oklahoma and may not be removed to this Court.

Lastly, the Court is inclined to follow the sage conclusion found in Alexander v. Westinghouse, *supra*, at 1122:

"Even if there were reason to doubt the correctness of this disposition, any doubt should be resolved in favor of remand to spare the parties proceedings which might later be nullified should jurisdiction be found to be lacking."

The Court concludes Plaintiff's Motion To Remand should be and the same is hereby GRANTED. This case is remanded to the District Court for Tulsa County, State of Oklahoma.

IT IS SO ORDERED this 16th day of March, 1993.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", is written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE MAR 18 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 18 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

GWENDOLYN J. WALKER,

Plaintiff,

vs.

ROBERT BUTKIN,

Defendant.

Case No. 93-C-4-B

O R D E R

Before the Court for consideration is the Defendant's Motion to Dismiss (#2). Defendant, Robert Butkin ("Butkin"), moves the Court to dismiss Plaintiff's *pro se* complaint "under authority of Rules 12(b)(1), (3), (4), (5) and (6) of the Federal Rules of Civil Procedure for the reasons that the Complaint herein fails to state a claim upon which relief can be granted, the court lacks subject matter jurisdiction, venue is improper, and because of insufficiency of process and insufficiency of service of process."

Plaintiff, Gwendolyn Jean Walker ("Walker"), filed her *pro se* complaint on January 5, 1993. Walker contends that Butkin, an assistant attorney general, ignored a complaint against Southwestern Bell Telephone Company ("Southwestern Bell") that she brought to his office on April 8, 1992. Walker states she has repeatedly attempted to determine the status of her complaint but has received no response from the Attorney General's office. Walker alleges that the Defendant has ignored her complaint "at the request of Southwestern Bell." She also contends that if the Defendant had not ignored her complaint, she would have her job

with Southwestern Bell and her life would not be in danger.

Plaintiff's complaint is deficient in several respects. Plaintiff has failed to include a statement of the grounds upon which the Court's jurisdiction depends as required by Rule 8 of the Federal Rules of Civil Procedure. A very liberal interpretation of Plaintiff's complaint indicates that Plaintiff may be attempting to bring an action under 42 U.S.C. §1983 for violation of her 14th amendment right to equal protection. However, the Court concludes the pertinent jurisdictional statutes (28 U.S.C. §§1331 and 1343(3)) do not give the Court subject matter jurisdiction of this action as the matter in controversy does not present a substantial federal question.¹ DeMarsh v. Payzant, 550 F.Supp. 6, 8 (W.D.Okla. 1981). Furthermore, the Plaintiff has alleged no facts to support a finding of diversity jurisdiction.

The Court also concludes that venue is improper in this district. 28 U.S.C. §1391(b). Plaintiff's complaint and her response to the Defendant's motion to dismiss fail to establish that any of the events giving rise to her claims occurred in this district or that defendant resides in this district or can be found in this district.


Finally, the Court concludes that Butkin is entitled to absolute immunity from suit with regard to his duties in investigating, drawing up, and presenting cases. Clulow v. Oklahoma, 700 F.2d 1291, 1298 (10th Cir. 1983), overruled on other

¹ Plaintiff has not alleged that she was treated differently by the Defendant due to her sex, race or some other constitutionally offensive reason.

grounds, Newcomb v. Ingle, 827 F.2d 675, 678 (10th Cir. 1987); see also, Mead v. Grubbs, 841 F.2d 1512, 1532-33 (10th Cir. 1988). Plaintiff's complaint appears to be directed at Defendant's failure to take legal action against Southwestern Bell and failure to inform Plaintiff of his reasons for such decision. Although common courtesy may have required Defendant to explain his actions to the Plaintiff, the law does not hold Defendant responsible for failing to do so.

For all the reasons set forth above, Plaintiff's Motion to Dismiss (#2) pursuant to Fed.R.Civ.P. 12(b)(1),(3) and (6) should be and is hereby GRANTED.

IT IS SO ORDERED THIS 15th DAY OF MARCH, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE MAR 18 1993

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

CHRISTOPHER D. GATES,
447-78-8289

Defendant,

CIVIL NO. 93-C-0045 B

FILED

MAR 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CONSENT JUDGMENT

The Court, having been advised by the parties of their desire to enter into a consent judgment, finds:

1. The Court has jurisdiction over the subject matter and the parties to this litigation.

2. The parties have agreed on the entry of judgment in favor of the plaintiff, United States of America, against defendant, Christopher D. Gates, as follows:

3. Defendant, Christopher D. Gates, is indebted or liable to the plaintiff in the principal amount of \$938.00, and interest thereafter on the principal amount from, the date of this judgment and thereafter at the rate of 3.21 % until paid and the costs of this action.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED.

DATED this 16th day of March, 1993.

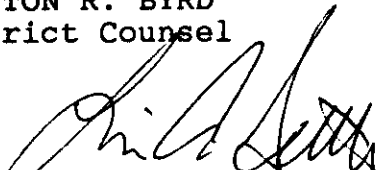
S/ THOMAS S. BRETT

UNITED STATES DISTRICT JUDGE

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

APPROVAL AND CONSENT
TO ENTRY OF JUDGMENT
CLIFTON R. BYRD
District Counsel

BY:


LISA A. SETTLE
Staff Attorney
Department of Veterans Affairs
Office of District Counsel
125 South Main Street
Muskogee, OK 74401
(918)687-2191


CHRISTOPHER D. GATES
Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 17 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM,
INC., an Oklahoma
corporation,

Plaintiff,

vs.

BROWN FLIGHT RENTAL ONE
CORP., a foreign corporation;
and RICHARD BROWN, an
individual,

Defendants.

Case No. 91-C-993-B

92-C-245-B

EDD 3/18/93

J U D G M E N T

In accordance with the jury verdict rendered March 16, 1993, Judgment is hereby entered in favor of Plaintiff Thrifty Rent-A-Car System, Inc. and against Defendants, Brown Flight Rental One Corp. and Richard Brown, on Thrifty's breach of contract claims in the amount of One Million Nine Hundred Fifty Six Thousand Three Hundred Forty Four Dollars and Fifty Four Cents (\$1,956,344.54) plus pre-judgment interest at the annual rate of 6% (15 O.S. § 266) from December 26, 1991, until paid and in favor of Plaintiff Thrifty Rent-A-Car System, Inc. and against Defendant Brown Flight Rental One Corp. on Thrifty's conversion claims in the amount of Three Hundred Ninety One Thousand Four Hundred Ten Dollars and Ninety Five Cents (\$391,410.95), plus post-judgment interest on said latter sum at the annual rate of 3.21% from the date hereon until paid.

Further, Judgment is hereby entered in favor of Richard Brown


121 10

1/CD

and against Thrifty Rent-A-Car System, Inc. on Thrifty's conversion claims for actual and punitive damages and in favor of Brown Flight Rental One Corp. and against Thrifty Rent-A-Car System, Inc. on Thrifty's conversion claims for punitive damages.

Costs are assessed against Defendants, Brown Flight Rental One Corp. and Richard Brown, if timely applied for under Local Rule 6. Any attorney fees claimed will be considered under Local Rule 6.

DATED this 17 day of March, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 17 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ABRAHAM ABDULLAH IBRAHEEM,

Plaintiff,

vs.

AUTOMOBILE CLUB INSURANCE
COMPANY,

Defendant,


No. 92 C-888 /C

ENTERED ON DOCKET


DATE MAR 18 1993

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Come now Plaintiff, **Abraham Abdullah Ibraheem**, by and through his attorney of record, **John B. Nicks**, and Defendant, **Automobile Club Insurance Company**, by and through their attorney of record, **Adam Scott Weintraub**, and jointly stipulate that the above-captioned cause and all of its claims should be dismissed to the prejudice of refiling.


John B. Nicks OBA #6678
Attorney at Law
1448 S. Carson Ave.
Tulsa, OK 74119-3438

Attorney for Plaintiff


Adam Scott Weintraub OBA 13209
801 I Philtower
427 So. Boston Ave.
Tulsa, OK 74103

Attorney for Defendant

DATE MAR 18 1993IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**FILED**

MAR 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN RE:

DONALD P. TAYLOR,

Debtor.

Bky. No. 86-03503-C

DONALD P. TAYLOR,

Plaintiff/Appellee,

Adversary No. 90-0278-W

v.

Case No. 92-C-431-B

UNITED STATES OF AMERICA,

Defendant/Appellant.

ORDER

This order pertains to the appeal of the United States from the final Judgment Order and Memorandum Opinion of the Bankruptcy Court for the Northern District of Oklahoma dated May 5, 1992. The order followed the March 31, 1992 denial of the United States' Motion for Partial Summary Judgment on the issue of whether debtor, Donald P. Taylor ("Taylor"), was a "responsible person" of Delta Cattle Corp. ("Delta") pursuant to 26 U.S.C. § 6672(a) and thus responsible for non-payment of corporate withholding taxes.

On March 16, 1992, a trial was held to determine whether Taylor was a "responsible person" and willfully failed to collect and pay the taxes. In a May 5, 1992 opinion, the Bankruptcy Court found that, although debtor had "badges" of responsibility, "[d]ebtor's duties within the corporate structure did not include business management or the responsibility in regard to payroll or the withholding of taxes." (Memorandum Opinion, attachment to Brief of Appellee Donald P. Taylor, pg. 6). The order denying the Motion for Partial Summary Judgment was interlocutory and merged into the final judgment and

was open to review on appeal from that judgment. Monarch Asphalt Sales Co., Inc. v. Wilshire Oil Co. of Texas, 511 F.2d 1073, 1077 (10th Cir. 1975).

After Delta, an Oklahoma corporation formed in 1981, filed for Chapter 11 bankruptcy on March 15, 1984, the U.S. assessed taxes against Taylor for Delta's failure to pay social security, unemployment, and employee income taxes relating to its Oklahoma and Mississippi operations for the taxable quarters ending December 31, 1981 through March 31, 1984. Taylor filed a Chapter 7 bankruptcy petition on December 16, 1986, after the United States ("U.S.") had filed two notices of federal tax liens. On September 24, 1990, he commenced an adversary proceeding against the U.S., pursuant to 11 U.S.C. § 505, denying that he was liable for the 100% penalty assessed against him as a "responsible person" and that he had "willfully" failed to truthfully collect, account for, or pay the employment taxes of Delta.

On October 28, 1991, the U.S. filed a motion for partial summary judgment on the issue whether debtor was a "responsible person" under 26 U.S.C. § 6672(a), claiming that Taylor possessed all indicia of "responsibility," had effective authority and exercised control over Delta's business affairs in both the office and cattle operations, and significantly participated in the Corporation. The U.S. argued that during all tax periods in issue Taylor, one of the original incorporators of Delta, served as the Corporation's resident agent, was both an officer and director, was an authorized signatory on at least five checking accounts, had corporate borrowing authority, signed checks, participated in hiring employees, signed Forms 941, Employer's Quarterly Federal Tax Returns, was paid a considerable salary, worked directly with, and answered only to, his brother, Oscar Taylor

(who is serving a prison term), and **had** discretion to pay outside creditors within guidelines established by Oscar.

On November 12, 1991, Taylor **filed** a response to the U.S.'s Motion for Partial Summary Judgment, claiming that, **although** he held indicia of responsibility and had participated in decisions of the Corporation, his brother, Oscar Taylor, made all final decisions over who and what was paid **and made** all financial decisions of the Corporation. Taylor pointed out that, because there **were** never any "formal" directors' meetings and all major financial operations were run by **Oscar**, he was not a "responsible person" under 26 U.S.C. § 6672.3.

On November 25, 1991, the Bankruptcy Court denied the U.S.'s Motion for Partial Summary Judgment, holding that **there were** material facts in dispute on the issue of whether Taylor had the specific duty to **collect**, account for, and pay the employment taxes for the tax quarters in issue. At the **hearing** the Bankruptcy Judge stated that Taylor "had the authority to exercise control over **the payroll** . . . he was a director; he had check writing ability; he had, as a director **and as vice president**, he had authority." (Transcript of Hearing dated November 25, 1991, **pg. 21**). But the Judge found that there was a question as to whether Taylor had the **specific "duty"** to see to it that these taxes were in fact paid. (See Transcript of Hearing dated November 25, 1991, **pg. 21**). The Bankruptcy Court denied the motion and set the **matter** for trial.

On March 16, 1992, the issue of **whether** Taylor was a "responsible person" was tried. When the Bankruptcy Court **found** that he was not a "responsible person," it never reached the issue of whether he **willfully failed** to collect or pay the taxes. On May 14,

1992, the U.S. appealed this decision.

The district court has jurisdiction to hear appeals from final decisions of the bankruptcy court under 28 U.S.C. § 158(a)¹. Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate review of bankruptcy rulings with respect to findings of fact. In re: Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983). However, this "clearly erroneous" standard does not apply to review of findings of law or mixed questions of law and fact, which are subject to the de novo standard of review. In re: Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988); In re: Mullett, 817 F.2d 677, 679 (10th Cir. 1987). The parties agree that this appeal challenges the legal conclusion drawn from the facts presented at trial, so de novo review is proper.

Title 26 of the U. S. Code, §§ 3102(a) and 3402(a), requires employers to deduct and withhold income and social security taxes from wages paid their employees. Section 7501 provides that "the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States."

Title 26 of the U. S. Code, § 6672(a)², assesses a penalty against corporate employees who, though responsible for withholding and paying over the employment taxes

¹ Title 28 U.S.C. § 158(a) states in pertinent part:

(a) The district court of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title

² Title 26 of the U. S. Code, § 6672(a), states in part:

Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over

to the United States, fail to ensure that the employer complies with these laws. This penalty is separate and distinct from the employer's liability for the employment taxes, and may be assessed and collected against any "person" who is under a duty to collect, account for, or pay over the employment taxes of the employer. 26 U.S.C. § 6671. Thus, for an individual to be liable under § 6672, he must have been a person responsible for the collection of third party taxes, and he must have willfully failed to collect or pay over the trust fund taxes. Slodor v. U.S., 436 U.S. 238, 250 (1978).

The Tenth Circuit discussed the definition of a "responsible person" in Jay v. U.S., 865 F.2d 1175 (10th Cir. 1989), relying on three earlier cases from other circuits. The court rested its finding that Jay was not a responsible party on the fact that he was not in the position to decide what bills were to be paid. Jay did not manage the day-to-day affairs of the corporation or serve as an officer and was given specific instructions by the corporation president on which bills to pay, so he had no authority to pay the taxes. He functioned as an office manager and could write checks, but he carried out his responsibilities subject to the executive committee's instructions.

The Jay court distinguished the cases of Howard v. U.S., 711 F.2d 729 (5th Cir. 1983), Roth v. U.S., 779 F.2d 1567 (11th Cir. 1986), and Gephart v. U.S., 818 F.2d 469 (6th Cir. 1987). In Howard, the court found the taxpayer a responsible person, because he served as director, minority shareholder, and executive vice-president of the corporation and managed the corporation's day-to-day operations. The president and majority stockholders instructed Howard not to pay the federal taxes, but the court noted that he had the authority to pay them and would have lost that authority only after paying the

taxes. While he was in a difficult position, the court could not condone "his abdication of the responsibility imposed upon him by law." 711 F.2d at 734.

Similarly in Roth, the court found **the taxpayer** a responsible person, because he was the vice-president and minority shareholder of the corporation who handled its day-to-day operations and wrote checks on its behalf. The company president instructed him to pay other creditors and not the government, **but** the court considered that, even after being instructed not to pay the taxes, Roth **caused** deductions to continue to be made from employee paychecks, knowing fully **that** he would not transmit the funds to the government.

The Gephart court also found **that a taxpayer** could not rely on the "Nuremberg defense" that he was only following **orders** from a superior to avoid being found a responsible person. Gephart was the general manager of the corporation, not a shareholder, director, or officer, who **possessed** checkwriting authority. The fifty-percent shareholder and officer of the corporation **exercised** the final authority over which creditors to pay and told Gephart it was none of **his** business that federal taxes were not paid. The court found that Gephart exercised **control over** the day-to-day administrative, accounting, and operating functions of the business, **and cited** Howard and Roth in rejecting his claim that he was not responsible because he **was** instructed not to pay the taxes.

The Gephart court listed **specific facts** to be relied on in determining who is a responsible person:

- (1) the duties of the officer as **outlined** by the corporation by-laws; (2) the ability of the individual to sign **checks** of the corporation; (3) the identity of the officers, directors, and **shareholders** of the corporation; (4) the identity of the individuals who hired and **fired** employees; (5) the identity of the

individuals who were in control of the financial affairs of the corporation.

818 F.2d 473.

The court in Jay relied on the principles in Howard, Roth, and Gephart to find that Jay was not a responsible person, noting that, unlike Roth and Howard, he did not manage the day-to-day affairs of the corporation or serve as an officer or treasurer with authority to pay all bills, and unlike Roth, did not receive generalized instructions on priorities, but rather specific ones to pay other creditors. The record failed to establish that Jay "possessed a sufficient degree of authority over corporate decisionmaking" to make him a responsible person. 865 F.2d at 1179.

Taylor claims he was not a responsible party, because his brother was "the Boss" and made all the financial decisions for Delta. Taylor admits he was an officer, served on the Board of Directors, was an authorized signatory on company checking accounts, and had authority to borrow money for Delta, which he never exercised. The parties agree that the court must review the entire record to determine whether the decision of the bankruptcy court was proper.

The testimony at the hearing in bankruptcy court on March 16, 1992 revealed the following: Donald P. Taylor was an authorized signatory on fourteen Delta checking accounts (Transcript of March 16, 1992 hearing ("Tr"), pp. 5-6), he hired Jeanie Childers ("Childers") to work for Delta in 1981 (Tr 52), he dealt with creditors (Tr 53, 269), he instructed Childers as to which Delta bills to pay (Tr 54-55, 66), he signed time sheets (Tr 70), he knew taxes weren't being paid in 1982 (Tr 74-75, 116-117), he ran the Delta office in Tulsa when his brother was not there (Tr 96, 137), he signed checks, even some payable

to cash (Tr 93, 98, 110, 111, 140, 172, 217, 230-233, 267, 269), his title was vice-president and controller at Delta (Tr 110, 197, 207), he signed at least one Delta employment tax return (Tr 126-127, 134-135, 221, 269), and he was in charge of ranch and farm operations (Tr 154, 172, 181, 203). Taylor told the court he did not learn until late 1982 that Delta taxes were not **being paid** and he discussed the problem with his brother, who told him he would take **care of the problem** (Tr 271). Again in late 1983 or early 1984, he was told taxes were **not being paid** (Tr 272). He stated that he never attended a Delta board meeting or saw **any by-laws** of the corporation (Tr 274).

Under the principles set out in Jay v. U.S., Donald P. Taylor was a "responsible person." He instructed clerical help as to **what bills** to pay, managed day-to-day operations when his brother was absent, hired **employees**, served as vice-president and controller, had checkwriting authority, signed at least **one employment tax return**, and was aware that taxes were not paid at least in 1982. **While he** may not have had as much authority over corporate decisionmaking as his brother, the record establishes that he possessed a sufficient degree of authority over **corporate decisionmaking** to make him a "responsible person." The record also establishes **that he willfully failed** to collect and pay over the employment taxes owed to the federal **government**.

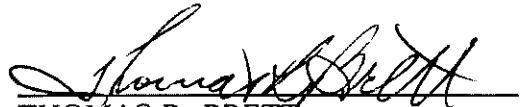
Taylor cites Walls v. U.S., 90-1 USTC 50,266, 1990 WL 74385 (D.C. Cal. 1990), for the proposition that even when a **person is in control** of business operations, he is not a "responsible person" if he has no **control over** payment of checks. However, Walls was president of a radio station who **supervised and directed** the day-to-day operations, but had to obtain permission from the station **owner to spend** any amount in excess of \$10,000.00,

and was not an authorized signatory on the station checking account during the time federal taxes were not paid. Clearly, his authority and control were strictly limited by the owner and, as the court found, he "had no power to cause the taxes to be paid." This case can be distinguished from the one at bar.

The Bankruptcy Court in its Memorandum Opinion cited In re Brady, 110 B.R. 16 (Bankr.Nev. 1990), which found that Brady, who was director, vice-president, and a fifty percent shareholder of the company, was not a "responsible person." However, all checks written by the company were cleared by the president, and Brady never prepared or supervised preparation of the payroll or tax returns nor did he sign payroll checks or quarterly returns. He had no knowledge of the late or nonpayment of payroll taxes. The corporate duty to see that taxes were paid was exclusively given to the company president. This case, too, can be distinguished from the one at bar.

The Bankruptcy Judge erred in finding that Donald P. Taylor was not a "responsible person." The United States has a valid claim against Donald P. Taylor for unpaid social security, unemployment, and employee income taxes of Delta in the amount of \$117,162.26 plus interest and the notice of Federal Tax Lien filed March 31, 1986, and refiled August 13, 1987, is valid and enforceable. It is therefore ordered that the decision of the Bankruptcy Court dated May 5, 1992, is hereby REVERSED and this matter is REMANDED to the Bankruptcy Court for entry of judgment in accordance with this Order.

Dated this 16th day of March, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON RECORD

DATE MAR 18 1993

FILED

MAR 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PETER BUTZ,

Plaintiff,

v.

BAMA PIE LIMITED PARTNERSHIP,
an Oklahoma limited partnership,

Defendant.

Case No. 92-C-322-B

ORDER OF DISMISSAL WITH PREJUDICE

This matter came on before the Court this 16th day of March, 1993, upon the parties' Stipulation of Dismissal With Prejudice, and for good cause shown, it is therefore

ORDERED, ADJUDGED AND DECREED, that Plaintiff's cause of action against Defendant, Bama Pie Limited Partnership, is hereby dismissed with prejudice with each party to bear its own costs and attorney fees.

UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE MAR 18 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARK AMERICAN HORSE,

Plaintiff,

vs.

CITY OF OWASSO; POLICE CHIEF
CLIFFORD MOTTO, individually
and in his representative
capacity; and City Manager,
RODNEY RAY, individually and
in his representative capacity,

Defendants.

Case No. 92 C 260 B

FILED


MAR 17 1993

Richard M. Lowr
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

STIPULATION OF DISMISSAL WITH PREJUDICE

All the parties to this action hereby stipulate that any and all causes of action and claims against the Defendants, City of Owasso, Clifford Motto and Rodney Ray, are hereby dismissed with prejudice.


HOBART MARK AMERICAN HORSE,
PLAINTIFF


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Hobart Mark American Horse

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ATTORNEY FOR DEFENDANTS,
City of Owasso, Clifford Motto,
and Rodney Ray

MAG\Borse\Stip.DWP

ENTERED ON DOCKET
MAR 18 1993
DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PINNACLE CORPORATION, a
Delaware corporation,

Plaintiff,

vs.

Case No. 92 C-28 B

ANGLO AMERICAN EQUITY
CORPORATION, an Oklahoma
corporation, KAY-CREEK
ASSOCIATES LIMITED PARTNERSHIP,
an Oklahoma Limited Partnership,
WILLIAM D. DAILY,
ELLIS R. JONES, III,
JOE P. AUTRY, PHILIP GOLLHOFFER,
CAROLYN GOLLHOFFER, J.A. WEILER,
CAROL WEILER, GENE HASENBECK,
GERALD S. EPLEE,
SUDHIR L. DESAI, M.D.,
LOUIS CLARK, A.B. BHANSALI, M.D.,
CHARLES R. THRUSH, RAYMOND BERG,
LEON L. OXFORD, MARILYN J. BASTIAN,
GERALD S. EPLEE, JOHN J. SALEM,
KAZYSZTOF T. LEMANSKI,
WALTER LIPKIN, MYRA B. LIPKIN,
DONALD RAY GUSTAVSON, JOHN B. CLARK,
KENNETH R. SANTERO, ROY T. BARNWELL,
SYBIL ATCHISON, JOE CHRONISTER,
DR. THOMAS B. CAMERON, TODD TRIPP,
JOE P. EVANS, STEVEN D. HILTON,
JOYCE J. AUTRY, JOHN LEINSTER,
DOYLE PHILMON, WILLIAM BRAME,
CHRISTY FAMILY TRUST, RAY BERG,
MIGUEL MUNIZ, ELLIS JONES III,
MIKE MANCUSO, LOUIS CLARK,
PETER SIMON, ALAN R. SMITH,
Limited Partners of Kay-Creek
Associates Limited Partnership,
and all unknown and JOHN DOE
Limited Partners of Kay-Creek,

Defendants.

FILED

MAR 17 1993


Richard M. Lowry, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

OF
JOINT STIPULATION FOR DISMISSAL

The Plaintiff and Defendants jointly request this Court to enter an order of Dismissal with Prejudice for the Plaintiff's causes of action against all Defendants.

WHEREFORE, premises considered, the Plaintiff and Defendants respectfully request this Court to enter its Order of Dismissal with Prejudice of the Plaintiff's claims against all Defendants herein.

SNEED, LANG, ADAMS & BARNETT

By 

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Attorneys for Defendants,
Anglo American Equity Corp.
and Kay-Creek Associates
Limited Partnership

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EDWARD L. BRUCE,
Plaintiff,

vs.

LOUIS W. SULLIVAN, M.D.,
Secretary of the Department
of Health and Human Services,
Defendant.

No. 91-C-990-E

FILED
MAR 25 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
MAR 18 1993
DATE _____

ORDER

Comes now before the Court Plaintiff's Motion for Review of the decision of an administrative law judge ("ALJ") denying disability benefits. Plaintiff asks this Court to reverse the order of the ALJ and grant him disability benefits on the grounds that the decision of the ALJ is unsupported by the evidence and is erroneous as a matter of law. Defendant has responded to Plaintiff's complaint by filing a motion seeking remand of this action for further administrative action pursuant to 42 U.S.C. §405(g)(4). Defendant recognizes that the ALJ's decision was not supported by substantial evidence in that the Secretary's decision failed to make reference to Plaintiff's alcoholism in presenting the hypothetical questions to the vocational expert. Defendant seeks remand of this action for acquisition of further vocational expert testimony on the implications of Plaintiff's alcohol abuse.

Section 405(g) of the Social Security Act authorizes this Court to remand this action for further administrative hearings:

The Court may ... at any time order additional evidence to be taken before the Secretary, but only upon a showing that there

2

is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding....

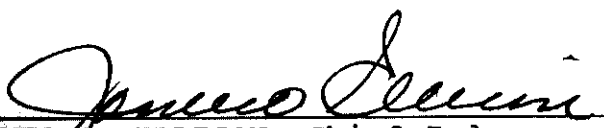
42 U.S.C. §405(g). This Court is bound by the ruling of the Tenth Circuit Court of Appeals in Hargis v. Sullivan, 945 F.2d 1482, 1492 (10th Cir. 1991) wherein it was held that where testimony is elicited from a vocational expert through the proposition of hypothetical questions, those hypothetical questions must relate with precision all of the claimant's impairments in order for such testimony to constitute substantial evidence.

It is clear to this Court that the evidence missing in the hypothetical questions presented in this case were material, but no showing of good cause has been made for this failure. Therefore, this Court, in accord with 42 U.S.C. §405(g) reverses the decision of the ALJ and remands this action for further proceedings consistent with the amended report and recommendation of the Magistrate.

IT IS THEREFORE ORDERED that Plaintiff's motion seeking review is hereby granted to the extent that this Court has reversed the order of the administrative law judge.

IT IS FURTHER ORDERED that Defendant's motion for remand is hereby granted and this action is remanded for further proceedings consistent herewith.

ORDERED this 17th day of March, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

OKLAHOMA GLASS COMPANY, d/b/a
GLASS DOCTOR,

Plaintiff,

v.

NYNEX INFORMATION RESOURCES
COMPANY, a Delaware corporation,

Defendant.

Case No. 92-C-741 E

ENTERED ON DOCKET
MAR 17 1993
DATE

ORDER OF REMAND

This cause having come on for consideration on the Application and Motion of the Plaintiff to remand this action to the District Court in and for Tulsa County, State of Oklahoma, and the Court having considered the affidavit in support of the motion and the pleadings filed herein and being advised that the Defendant does not object to the remand based upon the Plaintiff's affidavit as to the amount in controversy,

IT IS ORDERED, that the Plaintiff's motion be and the same hereby is granted, and that this cause be remanded to the District Court in and for Tulsa County, State of Oklahoma; and that the clerk of this Court shall mail a certified copy of this order to the clerk of said District Court pursuant to 28 U.S.C. § 1447(c).

DATED: March 16, 1993


United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SPECTRUM NATURAL GAS COMPANY
LIQUIDATING TRUST,

Plaintiff,

vs.

WILLIAM A. ROOKSTOOL,

Defendant,

SPECTRUM NATURAL GAS COMPANY
LIQUIDATING TRUST,

Plaintiff,

vs.

UNIT PETROLEUM CO.,

Defendant,

SPECTRUM NATURAL GAS COMPANY
LIQUIDATING TRUST,

Plaintiff,

vs.

STARGAS CORP.,

Defendant.

ENTERED ON DOCKET

~~MAR 16 1993~~

FILED

MAR 15 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 92-C-1074-E

No. 92-C-1075-E
(consolidated case)

No. 92-C-1076-E
(consolidated case)

ORDER

Each of the Defendants in these actions, which have been consolidated by this Court for purposes of this appeal, seeks leave of this Court to appeal from interlocutory orders of the United States Bankruptcy Court for the Northern District, entered in each of the adversary proceedings on November 10, 1992. Those interlocutory orders denied Motions for Dismissal filed by each of

the Defendants herein. For the reasons stated below, the Motions of each of the three Defendants seeking Leave to Appeal are hereby denied.

These adversary proceedings, each seeking avoidance of an alleged preference, were all commenced on the 12th day of August, 1992 in connection with the Chapter 11 bankruptcy of debtor-in-possession Spectrum Natural Gas Company ("Spectrum"), filed November 20, 1989. Spectrum's Second Amended Plan of Reorganization (the "Plan") was confirmed on October 10, 1990. Pursuant to that Plan, all of Spectrum's assets and the claims relating thereto were assigned to Spectrum Natural Gas Company Liquidating Trust (the "Trust"), and Mr. Burk E. Bishop assumed the status of trustee the 31st day of October, 1990.

On November 10, 1990, the bankruptcy court entered three orders, denying the motions of Rookstool, Unit Petroleum Company, and Stargas Corporation, respectively, and refusing to dismiss the trustee's complaint. Each of these parties now seek leave to appeal those respective interlocutory orders of the bankruptcy court.¹ The only question raised at this point is whether this Court should grant the Defendants leave to appeal the interlocutory orders.

This Court is bound by the standard set forth in 28 U.S.C.

¹ The parties do not dispute that the orders denying the motions to dismiss are interlocutory orders. See Van Cauwenberghe v. Biard, 486 U.S. 517, 108 S.Ct. 1945, 100 L.Ed.2d 517 (1988) (denial of motions to dismiss not appealable under 28 U.S.C. §1291); John E. Burns Drilling v. Central Bank of Denver, 739 F.2d 1489, 1491 (10th Cir. 1984) ("the denial of a motion to dismiss is not a 'final decision'").

§1292(b) in determining whether to grant leave to appeal an interlocutory order of the Bankruptcy Court. That statute requires the following findings by this Court before leave shall be granted: (1) the interlocutory order involves a controlling question of law as to which there is substantial ground for difference of opinion, and (2) an immediate appeal from the interlocutory order may materially advance the ultimate termination of the litigation.

The legal question raised by each of the orders denying the Defendants' Motions to Dismiss is whether the limitations period for the filing of a preference action, which ordinarily begins to run from the filing of the voluntary petition, as prescribed by Bankruptcy Code §546(a)(1), starts anew upon the assignment of the estate's claims to a plan trust or upon the election of a plan trustee? Defendants ask this Court to determine that neither the act of assigning a claim to the trust nor the act of electing the plan trustee triggers anew the running of two-year limitations period. Thus, under the analysis of the Defendants, the limitations period would have expired in this matter two years after the filing of the voluntary petition (i.e. November 20, 1991), and therefore the filing of this adversary proceeding on August 12, 1992 would be barred.

The Tenth Circuit addressed the issue of whether a debtor-in-possession is subject to the same two-year statute of limitations set forth in §546(a)(1) as an appointed trustee in Zilkha Energy Co. v. Leighton, 920 F.2d 1520, 1524 (10th Cir. 1990), and held that the two-year limitation applies equally to an action filed by

a debtor in possession as to an action filed by a trustee. However, in a footnote therein, the Tenth Circuit specifically limited its holding so as not to incorporate the issue presented in the present case:

We take no position on whether a subsequent appointment of a trustee in a chapter 11 case would change the analysis. See Boatman v. E.J. Davis Co., 49 B.R. 719 (Bankr.D.Conn. 1985). While we perceive that to be a distinguishable circumstance requiring a different analysis, we leave the issue for a case in which the situation arises.


Zilkha at 1524 fn 11. The Tenth Circuit refers to the decision of the Bankruptcy Court for the District of Connecticut in Boatman wherein the issue of when the two year statute of limitations begins to run in a case where a trustee is appointed under a plan of reorganization subsequent to the filing of the voluntary petition by a debtor-in-possession. The Connecticut Bankruptcy Court held that the statute does not begin to run until the date of appointment of the trustee. Boatman at 720 [citing only 4 Collier on Bankruptcy §546.02 at p. 546-8 to 546-9 (15th ed.1984)]. That decision has been followed by three other Courts to date. In re: Pullman Const. Industries, Inc., 132 B.R. 359, 360 (Bankr.N.D.Ill. 1991); In re: Hunt, 136 B.R. 477 (Bankr.N.D.Tex. 1991); In re: Ajayem Lumber Corp., 145 B.R. 813 (Bkrcy.S.D.N.Y. 1992).

In light of the current unsettled state of the law in this Circuit on the issue at bar, this Court must find that each of the Defendants' appeals presents a controlling question of law on which there is substantial ground for difference of opinion. The question then becomes whether interlocutory appeal, in this instance, may materially advance the ultimate termination of the

litigation. The Court finds that to allow the interlocutory appeal at this stage in the proceeding would merely delay resolution of the debtor's reorganization. Once the adversary proceeding is resolved, the Defendants will each have the opportunity to appeal the final decision therein and raise the issue that they purport to raise at this point in time.

IT IS THEREFORE ORDERED that the Motions for Leave to Appeal by Defendant Rookstool, Unit Petroleum Company, and Stargas Corporation are hereby denied.

ORDERED this 15th day of March, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE UNKNOWN HEIRS, EXECUTORS,
ADMINISTRATORS, DEVISEES,
TRUSTEES, SUCCESSORS AND
ASSIGNS OF MABLE D. STANFIELD
a/k/a MABLE STANFIELD, Deceased;
RAYNELLE S. COLBERT as the
Administratrix of the Estate of
Mable Stanfield; BETTY L. DACUS;
LINDA BELL; JIMMIE STANFIELD;
HARRY GOLDERT, Tenant; COUNTY
TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

MAR 15 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 91-C-0106-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 15th day
of March, 1993. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; the Defendant, Raynelle S. Colbert as Administratrix of
the Estate of Mable Stanfield, Deceased, appears by her attorney,
Timothy E. McCormick; the Defendant, Harry Goldert, Tenant,
appears not, and should be dismissed from this action; the
Defendants, The Unknown Heirs, Executors, Administrators,

Devisees, Trustees, Successors and Assigns of Mable D. Stanfield a/k/a Mable Stanfield, Deceased; Betty L. Dacus; Linda Bell; and Jimmie Stanfield, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, Raynelle S. Colbert as Administratrix of the Estate of Mable Stanfield, Deceased, was served with Summons and Complaint on January 9, 1992; the Defendant, Betty L. Dacus, acknowledged receipt of Summons and Complaint on February 25, 1991 and was mailed a copy of the Order for Service By Publication as set forth in the Certificate of Publication and Mailing; that the Defendant, Linda Bell, acknowledged receipt of Summons and Complaint on March 1, 1991 and was mailed a copy of the Order for Service By Publication as set forth in the Certificate of Publication and Mailing; that the Defendant, Jimmie Stanfield, acknowledged receipt of Summons and Complaint on February 27, 1991 and was mailed a copy of the Order for Service By Publication as set forth in the Certificate of Publication and Mailing; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 21, 1991; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 21, 1991.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Mable D. Stanfield a/k/a Mable Stanfield, Deceased, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of

general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning July 9, 1992, and continuing through August 13, 1992, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Mable D. Stanfield a/k/a Mable Stanfield, Deceased, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Mable D. Stanfield a/k/a Mable Stanfield, Deceased. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the

parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

The Court further finds that the Defendant, Harry Goldert, Tenant, has not been served herein as such person does not exist, and should therefore be dismissed as a Defendant herein.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on March 11, 1991; that the Defendant, Raynelle S. Colbert as Administratrix of the Estate of Mable Stanfield, Deceased, filed her Answer on February 13, 1992; and that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Mable D. Stanfield a/k/a Mable Stanfield, Deceased; Betty L. Dacus; Linda Bell; and Jimmie Stanfield, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Seven (7), Block Fifteen (15), VALLEY VIEW
ACRES ADDITION to the City of Tulsa, County of
Tulsa, State of Oklahoma, according to the
recorded plat thereof.

The Court further finds that this is a suit brought
for the further purpose of judicially determining the death of
Mable D. Stanfield a/k/a Mable Stanfield and judicially
determining the heirs of Mable D. Stanfield a/k/a Mable
Stanfield.

The Court further finds that on June 4, 1965, Harold D.
Nicholson and Joan L. Nicholson executed and delivered to the
United States of America, acting on behalf of the Administrator
of Veterans Affairs, now known as Secretary of Veterans Affairs,
their mortgage note in the amount of \$9,500.00, payable in
monthly installments, with interest thereon at the rate of 5.75
percent per annum.

The Court further finds that as security for the
payment of the above-described note, Harold D. Nicholson and
Joan L. Nicholson executed and delivered to the United States of
America, acting on behalf of the Administrator of Veterans
Affairs, now known as Secretary of Veterans Affairs, a mortgage
dated June 4, 1965, covering the above-described property. Said
mortgage was recorded on June 7, 1965, in Book 3584, Page 219, in
the records of Tulsa County, Oklahoma.

The Court further finds that Mable D. Stanfield a/k/a
Mable Stanfield (hereinafter referred to by either of these
names) became the record owner of the real property involved in
this action by virtue of that certain General Warranty Deed dated

August 26, 1971, from Harold D. Nicholson and Joan L. Nicholson, husband and wife, to Mable D. Stanfield, a single person, which General Warranty Deed was filed of record on August 30, 1971, in Book 3983, Page 223, in the records of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that Mable Stanfield died intestate on June 8, 1987. Upon the death of Mable Stanfield, the subject property vested in Betty L. Dacus, Linda Bell, and Jimmie Stanfield, as the known heirs of Mable D. Stanfield a/k/a Mable Stanfield. However, the probate of the Estate of Mable Stanfield was never completed. The Certificate of Death No. 13950 was issued by the Oklahoma State Department of Health certifying Mable Stanfield's death.

The Court further finds that Plaintiff is entitled to a judicial determination of the death of Mable D. Stanfield a/k/a Mable Stanfield and to a judicial determination of the heirs of Mable D. Stanfield a/k/a Mable Stanfield.

The Court further finds that default has been made under the terms of the aforesaid note and mortgage by reason of failure to make the monthly installments due thereon, which default has continued, and that by reason thereof Plaintiff alleges that there is now due and owing under the note and mortgage, after full credit for all payments made, the principal sum of \$3,329.46, plus interest at the rate of 5.75 percent per annum from June 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action

in the amount of \$339.55 (\$5.40 fees for service of Summons and Complaint, \$334.15 publication fees).

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$2.00 which became a lien on the property as of 1989. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that Defendants, Raynelle S. Colbert as Administratrix of the Estate of Mable Stanfield, Deceased and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Mable D. Stanfield a/k/a Mable Stanfield, Deceased; Betty L. Dacus; Linda Bell; and Jimmie Stanfield, are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem in the principal sum of \$3,329.46, plus interest at the rate of 5.75 percent per annum from June 1, 1989 until judgment, plus interest thereafter at the current legal rate of 3.21 percent per annum until paid, plus the costs of this action in the amount of \$339.55 (\$5.40 fees for service of Summons and Complaint, \$334.15 publication fees), plus any additional sums advanced or to be advanced or expended during

this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the death of Mable D. Stanfield a/k/a Mable Stanfield be and the same is hereby judicially determined to have occurred on June 8, 1987, in the City of Tulsa, County of Tulsa, State of Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the only known heirs of Mable D. Stanfield a/k/a Mable Stanfield, Deceased, are Betty L. Dacus, Linda Bell, and Jimmie Stanfield and that despite the exercise of due diligence of Plaintiff and its counsel no other known heirs of Mable D. Stanfield a/k/a Mable Stanfield, Deceased, have been discovered and it is hereby judicially determined that Betty L. Dacus, Linda Bell, and Jimmie Stanfield are the only known heirs of Mable D. Stanfield a/k/a Mable Stanfield, Deceased, and that Mable D. Stanfield a/k/a Mable Stanfield, Deceased, has no other known heirs, executors, administrators, devisees, trustees, successors and assigns; and the Court approves the Certificate of Publication and Mailing filed by Plaintiff regarding said heirs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Mable D. Stanfield a/k/a Mable Stanfield, Deceased; Raynelle S. Colbert as Administratrix of the Estate of Mable Stanfield, Deceased; Betty L. Dacus; Linda Bell; Jimmie Stanfield; Board of County Commissioners, Tulsa County, Oklahoma, and Harry Goldert, Tenant,

have no right, title, or interest in the subject real property, and the Defendant, Harry Goldert, Tenant, is hereby dismissed as a Defendant herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$2.00 for personal property taxes for the year 1989, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon failure to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$2.00, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under

and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S. T. G. 11/1/11

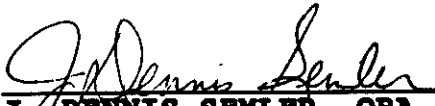
UNITED STATES DISTRICT JUDGE

APPROVED:

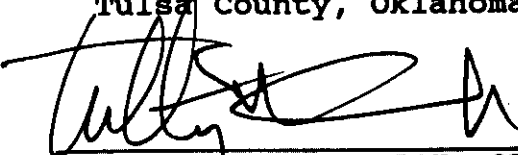
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Attorney for Defendant,
Raynelle S. Colbert as Administratrix
of the Estate of Mable Stanfield, Deceased

Judgment of Foreclosure
Civil Action No. 91-C-0106-B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DATE MAR 17 1993
FILED

MAR 12 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MIDAMERICA FEDERAL SAVINGS AND)
LOAN ASSOCIATION,)
)
Plaintiff,)
)
vs.)
)
SHERIDAN PROPERTIES, INC., et al.,)
)
Defendants.)

Case No. 88-C-134A-B

ORDER OF DISMISSAL

Upon Motion of Plaintiff, Local America Bank of Tulsa, F.S.B. ("Local America"), and Defendant Justin Lyon ("Lyon") to dismiss with prejudice certain claims pursuant to Rule 41 of the Federal Rules of Civil Procedure,

IT IS ORDERED that all claims asserted by Local America against Lyon, including its claim for a deficiency judgment, and all counterclaims asserted by Lyon against Local America and the Federal Deposit Insurance Corporation as Receiver for MidAmerica Federal Savings and Loan Association are hereby dismissed with prejudice, each party to bear his or its own costs and attorneys' fees.

DATED this 12th day of March, 1993.

THOMAS R. BRETT

THOMAS H. BRETT
United States District Judge
for the Northern District
of Oklahoma

FILED

MAR 16 1993

No. 93-C-179-E

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Defendants.

EDD 3/16/93

Plaintiff's motion for leave to proceed in forma pauperis is hereby **granted**. However, Plaintiff's action shall be dismissed at this time.

In Neitzke v. Williams, 490 U.S. 319 (1989), the Supreme Court recognized that a court is faced with two somewhat opposing responsibilities when determining which actions shall proceed with a plaintiff who is being allowed to commence an in forma pauperis action. First, a court must be sure that it complies with the "over-arching goal [of] the in forma pauperis statute: 'to assure equality of consideration for all litigants.'" Id. at 329, quoting Coppedge v. United States, 369 U.S. 438, 447 (1962). Commensurate with that responsibility, however, is the realization that §

1915(d) "is designed largely to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of bringing suit and because of the threat of sanctions for bringing vexatious suits under Federal Rule of Civil Procedure 11." Id. at 327.

Consequently, courts have the responsibility to dismiss lawsuits which are frivolous or malicious. A complaint is frivolous where it lacks an arguable basis either in law or in fact. Id. at 325. "Dismissals on these grounds are often made sua sponte prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering such complaints." Id. at 324.

The Supreme Court recently revisited Neitzke in Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728 (1992). The Court held that a dismissal under § 1915(d) is entrusted to the discretion of the court entertaining the in forma pauperis action, and should only be reviewed for an abuse of discretion. Id. at 1734.

Plaintiff alleges that on December 20, 1992, he submitted a grievance to Warden Champion alleging that Sergeant Bears spits on the sidewalks and grounds of the prison. Plaintiff further alleges that Champion refused to answer his grievance. Plaintiff requests 2.8 million dollars in damages.

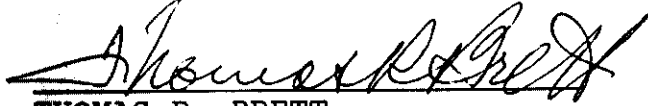
Contrary to Plaintiff's allegations, Plaintiff's own exhibits attached to his complaint reveal that Champion did in fact answer Plaintiff's grievance. Champion did not respond to Plaintiff's

allegations because Plaintiff failed to follow proper procedures, and Champion instructed Plaintiff to follow the proper procedures if he wished to resubmit his grievance. The court has reviewed Plaintiff's entire complaint and finds that Plaintiff's allegations are insubstantial, patently frivolous, and an abuse of this court.

This is but one of numerous lawsuits recently filed by Plaintiff, and many of Plaintiff's allegations seem to be made with the intent of harassing and provoking prison officials. Plaintiff is advised that the court may sanction Plaintiff if he files frivolous and malicious complaints in this federal court in the future.

Plaintiff's complaint is accordingly **DISMISSED** as frivolous.

SO ORDERED THIS 15 day of Mar., 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TERRY WILLIAM TOWLER,
Plaintiff,
vs.
RON CHAMPION, et al.,
Defendants.

No. 93-C-181-B

FILED

MAR 16 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

EDD 3/16/93

Plaintiff is an inmate incarcerated at the Dick Conner Correctional Center (DCCC) in Hominy, Oklahoma. He has filed with the court a motion for leave to proceed in forma pauperis and a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff's motion for leave to proceed in forma pauperis shall be granted. However, Plaintiff's action shall be dismissed without prejudice at this time.

Plaintiff alleges that the defendants negligently and incompetently caused a power failure at DCCC. The power failure lasted less than forty-eight hours. Plaintiff does not specify what constitutional rights he thinks were violated by defendants. However, Plaintiff cannot state a fourteenth amendment claim with an allegation of negligence. See, e.g., Daniels v. Williams, 474 U.S. 327 (1986). And Plaintiff must show deliberate indifference on the part of defendants for an eighth amendment violation. See Wilson v. Seiter, ___ U.S. ___, 111 S.Ct 2321 (1991).

Plaintiff's repeated allegations of negligence and


incompetence are inarguable as a matter of law and fail to state a claim upon which relief can be granted. And statements that Defendants "are just simply too incompetent to fulfill their duties" are evidence that Plaintiff may be more intent on harassing Defendants rather than filing serious constitutional charges against them.

Therefore, the court shall on its own motion dismiss Plaintiff's complaint pursuant to 28 U.S.C. § 1915(d) and Fed. R. Civ. P. 12(b)(6). However, Plaintiff shall have the opportunity to file an amended complaint attempting to overcome the deficiencies noted in this order, if he so wishes.

IT IS, THEREFORE, HEREBY ORDERED that:

1. Plaintiff's motion for leave to proceed in forma pauperis is granted.
2. Plaintiff's complaint is dismissed.
3. Plaintiff shall have twenty (20) days to file an amended complaint, if he so wishes.

SO ORDERED THIS 15th day of Mar, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SPECTRUM NATURAL GAS COMPANY
LIQUIDATING TRUST,

Plaintiff,

vs.

WILLIAM A. ROOKSTOOL,

Defendant,

SPECTRUM NATURAL GAS COMPANY
LIQUIDATING TRUST,

Plaintiff,

vs.

UNIT PETROLEUM CO.,

Defendant,

SPECTRUM NATURAL GAS COMPANY
LIQUIDATING TRUST,

Plaintiff,

vs.

STARGAS CORP.,

Defendant.

ENTERED ON DOCKET
DATE MAR 16 1993

No. 92-C-1074-E

FILED

MAR 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 92-C-1075-E
(consolidated case)

No. 92-C-1076-E
(consolidated case)

ORDER

Each of the Defendants in these actions, which have been consolidated by this Court for purposes of this appeal, seeks leave of this Court to appeal from interlocutory orders of the United States Bankruptcy Court for the Northern District, entered in each of the adversary proceedings on November 10, 1992. Those interlocutory orders denied Motions for Dismissal filed by each of

the Defendants herein. For the reasons stated below, the Motions of each of the three Defendants seeking Leave to Appeal are hereby denied.

These adversary proceedings, each seeking avoidance of an alleged preference, were all commenced on the 12th day of August, 1992 in connection with the Chapter 11 bankruptcy of debtor-in-possession Spectrum Natural Gas Company ("Spectrum"), filed November 20, 1989. Spectrum's Second Amended Plan of Reorganization (the "Plan") was confirmed on October 10, 1990. Pursuant to that Plan, all of Spectrum's assets and the claims relating thereto were assigned to Spectrum Natural Gas Company Liquidating Trust (the "Trust"), and Mr. Burk E. Bishop assumed the status of trustee the 31st day of October, 1990.

On November 10, 1990, the bankruptcy court entered three orders, denying the motions of Rookstool, Unit Petroleum Company, and Stargas Corporation, respectively, and refusing to dismiss the trustee's complaint. Each of these parties now seek leave to appeal those respective interlocutory orders of the bankruptcy court.¹ The only question raised at this point is whether this Court should grant the Defendants leave to appeal the interlocutory orders.

This Court is bound by the standard set forth in 28 U.S.C.

¹ The parties do not dispute that the orders denying the motions to dismiss are interlocutory orders. See Van Cauwenberghe v. Biard, 486 U.S. 517, 108 S.Ct. 1945, 100 L.Ed.2d 517 (1988) (denial of motions to dismiss not appealable under 28 U.S.C. §1291); John E. Burns Drilling v. Central Bank of Denver, 739 F.2d 1489, 1491 (10th Cir. 1984) ("the denial of a motion to dismiss is not a 'final decision'").

§1292(b) in determining whether to grant leave to appeal an interlocutory order of the Bankruptcy Court. That statute requires the following findings by this Court before leave shall be granted: (1) the interlocutory order involves a controlling question of law as to which there is substantial ground for difference of opinion, and (2) an immediate appeal from the interlocutory order may materially advance the ultimate termination of the litigation.

The legal question raised by the each of the orders denying the Defendants' Motions to Dismiss is whether the limitations period for the filing of a preference action, which ordinarily begins to run from the filing of the voluntary petition, as prescribed by Bankruptcy Code §546(a)(1), starts anew upon the assignment of the estate's claims to a plan trust or upon the election of a plan trustee? Defendants ask this Court to determine that neither the act of assigning a claim to the trust nor the act of electing the plan trustee triggers anew the running of two-year limitations period. Thus, under the analysis of the Defendants, the limitations period would have expired in this matter two years after the filing of the voluntary petition (i.e. November 20, 1991), and therefore the filing of this adversary proceeding on August 12, 1992 would be barred.

The Tenth Circuit addressed the issue of whether a debtor-in-possession is subject to the same two-year statute of limitations set forth in §546(a)(1) as an appointed trustee in Zilkha Energy Co. v. Leighton, 920 F.2d 1520, 1524 (10th Cir. 1990), and held that the two-year limitation applies equally to an action filed by

a debtor in possession as to an action filed by a trustee. However, in a footnote therein, the Tenth Circuit specifically limited its holding so as not to incorporate the issue presented in the present case:

We take no position on whether a subsequent appointment of a trustee in a chapter 11 case would change the analysis. See Boatman v. E.J. Davis Co., 49 B.R. 719 (Bankr.D.Conn. 1985). While we perceive that to be a distinguishable circumstance requiring a different analysis, we leave the issue for a case in which the situation arises.


Zilkha at 1524 fn 11. The Tenth Circuit refers to the decision of the Bankruptcy Court for the District of Connecticut in Boatman wherein the issue of when the two year statute of limitations begins to run in a case where a trustee is appointed under a plan of reorganization subsequent to the filing of the voluntary petition by a debtor-in-possession. The Connecticut Bankruptcy Court held that the statute does not begin to run until the date of appointment of the trustee. Boatman at 720 [citing only 4 Collier on Bankruptcy §546.02 at p. 546-8 to 546-9 (15th ed.1984)]. That decision has been followed by three other Courts to date. In re: Pullman Const. Industries, Inc., 132 B.R. 359, 360 (Bankr.N.D.Ill. 1991); In re: Hunt, 136 B.R. 477 (Bankr.N.D.Tex. 1991); In re: Ajayem Lumber Corp., 145 B.R. 813 (Bkrcy.S.D.N.Y. 1992).

In light of the current unsettled state of the law in this Circuit on the issue at bar, this Court must find that each of the Defendants' appeals presents a controlling question of law on which there is substantial ground for difference of opinion. The question then becomes whether interlocutory appeal, in this instance, may materially advance the ultimate termination of the

litigation. The Court finds that to allow the interlocutory appeal at this stage in the proceeding would merely delay resolution of the debtor's reorganization. Once the adversary proceeding is resolved, the Defendants will each have the opportunity to appeal the final decision therein and raise the issue that they purport to raise at this point in time.

IT IS THEREFORE ORDERED that the Motions for Leave to Appeal by Defendant Rookstool, Unit Petroleum Company, and Stargas Corporation are hereby denied.

ORDERED this 15th day of March, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE MAR 16 1993

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IN RE:

ROBERT JULIAN PALMORE, JR.,

Debtor.

ROBERT JULIAN PALMORE, JR.,

Plaintiff/Appellant,

v.

UNITED STATES OF AMERICA,
EX REL, THE INTERNAL REVENUE
SERVICE,

Defendant/Appellee.

Bky. No. 91-04044-W

Case No. 92-C-899-C

FILED

MAR 15 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This order pertains to the appeal of Robert Julian Palmore, Jr. ("Palmore") from the final order of the U. S. Bankruptcy Court for the Northern District of Oklahoma entered on September 22, 1992, finding that a federal tax lien attached to Palmore's qualified retirement plan under the Employee Retirement Insurance Security Act ("ERISA"), 29 U.S.C. § 1001, et seq.

Palmore's Petition in Bankruptcy under Chapter Seven was filed on November 12, 1991. At the time of filing, he scheduled indebtedness for individual income taxes for the calendar years ending 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990. The government had recorded in the office of the Tulsa County Clerk a federal tax lien for the tax years 1980 through 1984 on October 26, 1987, and a federal tax lien for the tax years 1988, 1989, and 1990 on June 18, 1991. Palmore filed a Complaint to Determine Dischargeability of Indebtedness and Avoidance of Lien for the 1980-84 taxes

after paying the taxes owing for 1988, 1989, and 1990. At trial the parties stipulated that the sole issue for determination was **whether** the lien of the government attached to Palmore's Qualified Retirement Plan **under** ERISA. The court entered its Order on September 22, 1992, finding the lien of **the** government did attach to the Plan.

The district court has jurisdiction to hear appeals from final decisions of the bankruptcy court under 28 U.S.C. § 158(a). Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate review of bankruptcy rulings with respect to findings of fact. In re: Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983). However, this "clearly erroneous" standard does not apply to **review** of findings of law or mixed questions of law and fact, which are subject to the **de novo** standard of review. In re: Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988); In re: Mullett, 817 F.2d 677, 679 (10th Cir. 1987). This appeal challenges the legal conclusion drawn from the facts presented at trial, so **de novo** review is proper.

The parties agree that Palmore's pension plan has an "anti-alienation" provision saying the plan cannot be alienated or **assigned**, as required under § 1056(d)(1) of ERISA for qualified pension plans. However, Title 26, United States Code, § 6321 reads: "If any person liable to pay any tax neglects or **refuses** to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person." (Emphasis added). The **ability of the** United States to impose a tax lien under 26 U.S.C. § 6321 is ". . . broad and **reveals on** its face that Congress meant to reach every

interest in property that a taxpayer might have". United States v. National Bank of Commerce, 472 U.S. 713, 719-20 (1985).

Under Title 26 of the U. S. Code, § 6331(a), if any person liable to pay any tax neglects or refuses to pay it within ten days after notice and demand, the government has the power to levy upon the property and rights to property belonging to that person, "(except such property as is exempt under Section 6334)" Section 6334 of Title 26¹ specifically enumerates certain property which is exempt from levy, but does not exempt ERISA-qualified pension plans. In addition, § 522(c)(2)(B)² of the Bankruptcy Code states that, if a notice of a federal tax lien has been timely and properly filed, the tax lien in question attaches to all property of the debtor.

The court in In re Perkins, 134 B.R. 408 (Bankr. E.D. Cal. 1991), discussed this issue recently. In Perkins, the debtor claimed that, because his pension plan had an ERISA "anti-alienation" provision, the government's tax lien did not attach to, and the government could not levy upon, his pension benefits. The court concluded that the debtor's argument was "fatal ... [in] its failure to deal with the special status of a federal tax lien." Id. at 411. The court relied upon United States v. National Bk. of Commerce to find that a tax lien

¹ Title 26, United States Code. § 6334(a)(6), only exempts "certain annuity and pension payments".

(a) Enumeration.--There shall be exempt from levy--

(6) Certain annuity and pension payments.--Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.

² Section 522(c)(2)(B) of the Bankruptcy Code states:

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except--

(2) a debt secured by a lien that is--

(B) a tax lien, notice of which is properly filed....

attached to the debtor's pension benefits. Id. The court also noted that 26 U.S.C. § 6334 did not exempt ERISA-qualified benefits. Id.

Palmore relies on the case of Patterson v Shumate, 112 S.Ct. 2242 (1992), to support his claim that his qualified retirement plan is exempt from the government's lien for unpaid taxes. In Patterson, the Supreme Court did not examine whether the United States, as a creditor, could utilize its lien and levy powers against an ERISA-qualified pension plan. The issue in Patterson was whether the "anti-alienation" provision of a pension plan restricted a transfer enforceable under "non-applicable bankruptcy law", so that the pension plan could be excluded from the debtor's estate under Section 541(c)(2) of the Bankruptcy Code,³ which discusses the property of a bankruptcy estate. Id. at 2246. The Court found that the pension was excluded from the property of the bankruptcy estate. The Court never discussed Sections 6321 or 6334 of the U.S. Code, or Section 522(c)(2)(B) of the Bankruptcy Code.


Palmore also relies on Guidry v. Sheet Metal Workers' Pension Fund, 493 U.S. 365 (1990), to support his argument. However, the Supreme Court in that case examined whether a labor union could impose a "constructive trust" on ERISA-qualified pension funds embezzled by a former union official, now in bankruptcy, and found no such trust could be imposed, as it violated ERISA's prohibition on assignment or alienation of pension benefits. The ability of the government to impose a tax lien or levy upon pension plan funds was not discussed.

It is ordered that the Bankruptcy Court's decision finding a federal tax lien attached

³ Section 541(c)(2) of the Bankruptcy Code states: "A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title".

to Palmore's qualified retirement plan **should** be and hereby is affirmed.

Dated this 15th day of March, 1993.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TERRY WILLIAM TOWLER,
Plaintiff,
vs.
RON CHAMPION, et al.,
Defendants.

No. 93-C-179-B

FILED

MAR 16 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

EDD 3/16/93

ORDER

Plaintiff is an inmate incarcerated at the Dick Conner Correctional Center (DCCC) in Hominy, Oklahoma. He has filed with the court a motion for leave to proceed in forma pauperis and a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff names DCCC Warden Ron Champion and Sergeant M. Bears as defendants.

Plaintiff's motion for leave to proceed in forma pauperis is hereby granted. However, Plaintiff's action shall be dismissed at this time.

In Neitzke v. Williams, 490 U.S. 319 (1989), the Supreme Court recognized that a court is faced with two somewhat opposing responsibilities when determining which actions shall proceed with a plaintiff who is being allowed to commence an in forma pauperis action. First, a court must be sure that it complies with the "over-arching goal [of] the in forma pauperis statute: 'to assure equality of consideration for all litigants.'" Id. at 329, quoting Coppedge v. United States, 369 U.S. 438, 447 (1962). Commensurate with that responsibility, however, is the realization that §

1915(d) "is designed largely to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of bringing suit and because of the threat of sanctions for bringing vexatious suits under Federal Rule of Civil Procedure 11." Id. at 327.

Consequently, courts have the responsibility to dismiss lawsuits which are frivolous or malicious. A complaint is frivolous where it lacks an arguable basis either in law or in fact. Id. at 325. "Dismissals on these grounds are often made sua sponte prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering such complaints." Id. at 324.

The Supreme Court recently revisited Neitzke in Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728 (1992). The Court held that a dismissal under § 1915(d) is entrusted to the discretion of the court entertaining the in forma pauperis action, and should only be reviewed for an abuse of discretion. Id. at 1734.

Plaintiff alleges that on December 20, 1992, he submitted a grievance to Warden Champion alleging that Sergeant Bears spits on the sidewalks and grounds of the prison. Plaintiff further alleges that Champion refused to answer his grievance. Plaintiff requests 2.8 million dollars in damages.

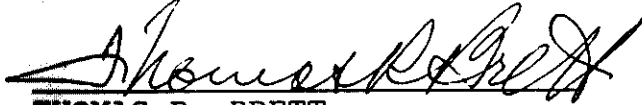
Contrary to Plaintiff's allegations, Plaintiff's own exhibits attached to his complaint reveal that Champion did in fact answer Plaintiff's grievance. Champion did not respond to Plaintiff's

allegations because Plaintiff failed to follow proper procedures, and Champion instructed Plaintiff to follow the proper procedures if he wished to resubmit his grievance. The court has reviewed Plaintiff's entire complaint and finds that Plaintiff's allegations are insubstantial, patently frivolous, and an abuse of this court.

This is but one of numerous lawsuits recently filed by Plaintiff, and many of Plaintiff's allegations seem to be made with the intent of harassing and provoking prison officials. Plaintiff is advised that the court may sanction Plaintiff if he files frivolous and malicious complaints in this federal court in the future.

Plaintiff's complaint is accordingly DISMISSED as frivolous.

SO ORDERED THIS 15 day of Mar., 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE **MAR 16 1993**

SPECTRUM NATURAL GAS COMPANY
LIQUIDATING TRUST,

Plaintiff,

vs.

WILLIAM A. ROOKSTOOL,

Defendant,

SPECTRUM NATURAL GAS COMPANY
LIQUIDATING TRUST,

Plaintiff,

vs.

UNIT PETROLEUM CO.,

Defendant,

SPECTRUM NATURAL GAS COMPANY
LIQUIDATING TRUST,

Plaintiff,

vs.

STARGAS CORP.,

Defendant.

No. 92-C-1074-E

FILED

MAR 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 92-C-1075-E
(consolidated case)

No. 92-C-1076-E
(consolidated case)

ORDER

Each of the Defendants in these actions, which have been consolidated by this Court for purposes of this appeal, seeks leave of this Court to appeal from interlocutory orders of the United States Bankruptcy Court for the Northern District, entered in each of the adversary proceedings on November 10, 1992. Those interlocutory orders denied Motions for Dismissal filed by each of

the Defendants herein. For the reasons stated below, the Motions of each of the three Defendants seeking Leave to Appeal are hereby denied.

These adversary proceedings, each seeking avoidance of an alleged preference, were all commenced on the 12th day of August, 1992 in connection with the Chapter 11 bankruptcy of debtor-in-possession Spectrum Natural Gas Company ("Spectrum"), filed November 20, 1989. Spectrum's Second Amended Plan of Reorganization (the "Plan") was confirmed on October 10, 1990. Pursuant to that Plan, all of Spectrum's assets and the claims relating thereto were assigned to Spectrum Natural Gas Company Liquidating Trust (the "Trust"), and Mr. Burk E. Bishop assumed the status of trustee the 31st day of October, 1990.

On November 10, 1990, the bankruptcy court entered three orders, denying the motions of Rookstool, Unit Petroleum Company, and Stargas Corporation, respectively, and refusing to dismiss the trustee's complaint. Each of these parties now seek leave to appeal those respective interlocutory orders of the bankruptcy court.¹ The only question raised at this point is whether this Court should grant the Defendants leave to appeal the interlocutory orders.

This Court is bound by the standard set forth in 28 U.S.C.

¹ The parties do not dispute that the orders denying the motions to dismiss are interlocutory orders. See Van Cauwenberghe v. Biard, 486 U.S. 517, 108 S.Ct. 1945, 100 L.Ed.2d 517 (1988) (denial of motions to dismiss not appealable under 28 U.S.C. §1291); John E. Burns Drilling v. Central Bank of Denver, 739 F.2d 1489, 1491 (10th Cir. 1984) ("the denial of a motion to dismiss is not a 'final decision'").

§1292(b) in determining whether to grant leave to appeal an interlocutory order of the Bankruptcy Court. That statute requires the following findings by this Court before leave shall be granted: (1) the interlocutory order involves a controlling question of law as to which there is substantial ground for difference of opinion, and (2) an immediate appeal from the interlocutory order may materially advance the ultimate termination of the litigation.

The legal question raised by each of the orders denying the Defendants' Motions to Dismiss is whether the limitations period for the filing of a preference action, which ordinarily begins to run from the filing of the voluntary petition, as prescribed by Bankruptcy Code §546(a)(1), starts anew upon the assignment of the estate's claims to a plan trust or upon the election of a plan trustee? Defendants ask this Court to determine that neither the act of assigning a claim to the trust nor the act of electing the plan trustee triggers anew the running of two-year limitations period. Thus, under the analysis of the Defendants, the limitations period would have expired in this matter two years after the filing of the voluntary petition (i.e. November 20, 1991), and therefore the filing of this adversary proceeding on August 12, 1992 would be barred.

The Tenth Circuit addressed the issue of whether a debtor-in-possession is subject to the same two-year statute of limitations set forth in §546(a)(1) as an appointed trustee in Zilkha Energy Co. v. Leighton, 920 F.2d 1520, 1524 (10th Cir. 1990), and held that the two-year limitation applies equally to an action filed by

a debtor in possession as to an action filed by a trustee. However, in a footnote therein, the Tenth Circuit specifically limited its holding so as not to incorporate the issue presented in the present case:

We take no position on whether a subsequent appointment of a trustee in a chapter 11 case would change the analysis. See Boatman v. E.J. Davis Co., 49 B.R. 719 (Bankr.D.Conn. 1985). While we perceive that to be a distinguishable circumstance requiring a different analysis, we leave the issue for a case in which the situation arises.


Zilkha at 1524 fn 11. The Tenth Circuit refers to the decision of the Bankruptcy Court for the District of Connecticut in Boatman wherein the issue of when the two year statute of limitations begins to run in a case where a trustee is appointed under a plan of reorganization subsequent to the filing of the voluntary petition by a debtor-in-possession. The Connecticut Bankruptcy Court held that the statute does not begin to run until the date of appointment of the trustee. Boatman at 720 [citing only 4 Collier on Bankruptcy §546.02 at p. 546-8 to 546-9 (15th ed.1984)]. That decision has been followed by three other Courts to date. In re: Pullman Const. Industries, Inc., 132 B.R. 359, 360 (Bankr.N.D.Ill. 1991); In re: Hunt, 136 B.R. 477 (Bankr.N.D.Tex. 1991); In re: Ajayem Lumber Corp., 145 B.R. 813 (Bkrcy.S.D.N.Y. 1992).

In light of the current unsettled state of the law in this Circuit on the issue at bar, this Court must find that each of the Defendants' appeals presents a controlling question of law on which there is substantial ground for difference of opinion. The question then becomes whether interlocutory appeal, in this instance, may materially advance the ultimate termination of the

litigation. The Court finds that to allow the interlocutory appeal at this stage in the proceeding would merely delay resolution of the debtor's reorganization. Once the adversary proceeding is resolved, the Defendants will each have the opportunity to appeal the final decision therein and raise the issue that they purport to raise at this point in time.

IT IS THEREFORE ORDERED that the Motions for Leave to Appeal by Defendant Rookstool, Unit Petroleum Company, and Stargas Corporation are hereby denied.

ORDERED this 15th day of March, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

MAR 10 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Hominy Chamber of Commerce,
a non-profit corporation,

Plaintiff,

vs.

The Secretary of the Interior of the
United States of America and the United
States of America,

Defendants.

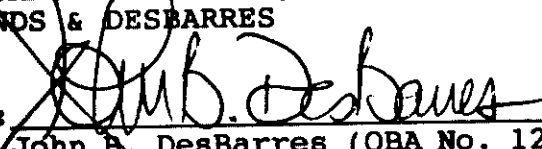
Case No. 91-C-0067-B

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Hominy Chamber of Commerce, by its attorney, John B. DesBarres of the law firm DRUMMOND, RAYMOND, HINDS & DESBARRES, and the Defendants, the Secretary of the Interior of the United States of America and the United States of America, by their attorney, Peter Bernhardt, Assistant United States Attorney to Tony M. Graham, United States Attorney, and, under Rule 41 of the Federal Rules of Civil Procedure, dismisses the above-styled case without prejudice by stipulation of dismissal signed by all parties who have appeared in the action.

DRUMMOND, RAYMOND,
HINDS & DESBARRES

By:


John B. DesBarres (OBA No. 12263)
1924 South Utica, Suite 1000
Tulsa, Oklahoma 74104
(918) 749-7378

UNITED STATES OF AMERICA

Tony M. Graham
United States Attorney

By: 

Peter Bernhardt (OBA No. 741)
Assistant United States Attorney
3900 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STEPHEN H. PERKINS a/k/a STEVE
PERKINS a/k/a STEPHEN HOLMES
PERKINS; BARBARA COURTNEY a/k/a
BARBARA COURTNEY-PERKINS a/k/a
BARBARA PERKINS; JEAN MARIE
SERES; TSL SERVICE CORPORATION;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

CIVIL ACTION NO. 92-C-48-B

FILED

MAR 11 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DEFICIENCY JUDGMENT

This matter comes on for consideration this 11th day
of MARCH, 1993, upon the Motion of the Plaintiff,
United States of America, acting on behalf of the Secretary of
Veterans Affairs, for leave to enter a Deficiency Judgment. The
Plaintiff appears by Tony M. Graham, United States Attorney for
the Northern District of Oklahoma, through Phil Pinnell,
Assistant United States Attorney, and the Defendant, Stephen H.
Perkins a/k/a Steve Perkins a/k/a Stephen Holmes Perkins, appears
neither in person nor by counsel.

The Court being fully advised and having examined the
court file finds that a copy of Plaintiff's Motion was mailed by
by first-class mail to Stephen H. Perkins a/k/a Steve Perkins
a/k/a Stephen Holmes Perkins, 9703 South 70th East Avenue, Tulsa,
Oklahoma 74133, and all answering parties and/or counsel of
record.

The Court further finds that the amount of the Judgment rendered on July 16, 1992, in favor of the Plaintiff United States of America, and against the Defendant, **Stephen H. Perkins a/k/a Steve Perkins a/k/a Stephen Holmes Perkins**, with interest and costs to date of sale is \$117,023.90.

The Court further finds that the appraised value of the real property at the time of sale was \$71,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered July 16, 1992, for the sum of \$60,946.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 25th day of January, 1993.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, **Stephen H. Perkins a/k/a Steve Perkins a/k/a Stephen Holmes Perkins**, as follows:

Principal Balance Plus Pre-Judgment	\$114,424.10
Interest as of 07-16-92	
Interest From Date of Judgment to Sale	1,403.98
Appraisal by Agency	500.00
Abstracting	255.00
Evidentiary Affidavit	50.00
Publication Fees of Notice of Sale	165.82
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$117,023.90
Less Credit of Appraised Value	- <u>71,000.00</u>
DEFICIENCY	\$ 46,023.90

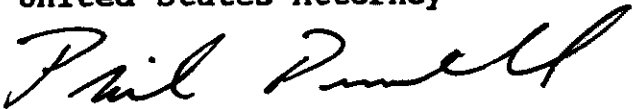
plus interest on said deficiency judgment at the legal rate of 3.21 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendant, Stephen H. Perkins a/k/a Steve Perkins a/k/a Stephen Holmes Perkins, a deficiency judgment in the amount of \$46,023.90, plus interest at the legal rate of 3.21 percent per annum on said deficiency judgment from date of judgment until paid.

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

PP/CSS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EDWIN C. TIEMANN, and
MAUDIE JOYCE TIEMANN,

Plaintiffs,

vs.

CITY OF TULSA, et al.,

Defendants

No. 92-C-448-E

FILED

MAR 15 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

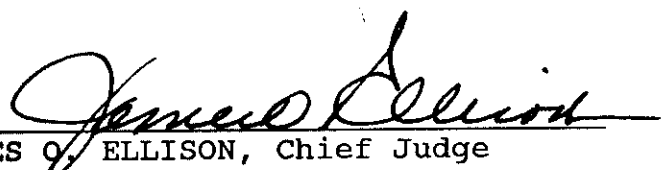
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DATE MAR 15 1993

JUDGMENT

This action came on for consideration before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered by virtue of this Court's Order granting all Defendants' Motions for Summary Judgment,

IT IS ORDERED, ADJUDGED, AND DECREED that the Plaintiffs take nothing from the Defendants, and that the action be dismissed on the merits.

SO ORDERED this 15th day of March, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

34

T.R.O. ENTERED THIS
12 DAY OF MARCH, 1993,
AT 4:45 O'CLOCK P.M.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DICKINSON BUSINESS SCHOOL, INC.,
d/b/a CAREER POINT BUSINESS
SCHOOL, a Missouri corporation,

Plaintiff,

vs.

RICHARD W. RILEY, or his
successor, in his official
capacity as the SECRETARY OF THE
UNITED STATES DEPARTMENT OF
EDUCATION,

Defendant.

Case No. 93-C-198-E

TEMPORARY RESTRAINING ORDER

On the Motion of plaintiff Dickinson Business School d/b/a Career Point Business School ("Career Point") for a Temporary Restraining Order enjoining the defendant, Richard W. Riley, or his attorneys, agents, officers, servants, employees, and upon those persons in active concert or participation with him (the "Secretary") who receive actual notice of this order, from continuing to publish Career Point's FY 1990 cohort default rate, from continuing to violate the various rights of Career Point as set forth herein, as such relates either to the FY 1990 Cohort Default Rate or subsequent rates, and from continuing to violate 20 U.S.C. § 1085(m); and mandating that the Secretary, suspend Career Point's FY 1990 cohort default rate and officially publish such invalidation, after reviewing Career Point's Complaint,

FILED

MAR 12 1993

RECEIVED
MAR 12 1993
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE MAR 15 1993

10

Motion for a Temporary Restraining Order, the Affidavits filed in support of said Motion; taking testimony of witnesses, and after considering the arguments of counsel, the Court FINDS that:

1. That this Court has jurisdiction under 28 U.S.C. §1331, 20 U.S.C. §1082(a)(2) and under the Administrative Procedures Act 5 U.S.C. §702.

2. The Court has considered the arguments of counsel that injunctive relief is limited by the statute under which plaintiff is proceeding, but the Court has determined that where an agency exceeds its authority, then injunctive relief should not be absent or absolutely prohibited under those circumstances.

3. The Tenth Circuit, in Lundgrin v. Claytor, 619 F.2d 61 (10th Cir. 1980), has required a plaintiff to meet the following test in order to receive extraordinary relief in the form of a Temporary Restraining Order. First, a substantial likelihood that the movant will eventually prevail on the merits. Second, a showing the movant will suffer irreparable injury unless the injunction issues. Third, that proof that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and fourth, a showing that the injunction, if issued, would not be adverse to the public interest.

4. In consideration of the first issue, likelihood of success on the merits, Lundgrin states that: "To justify a temporary injunction is not necessary that the plaintiff's right to a final decision after trial be absolutely certain, wholly without doubt; that if the other elements are present it will

ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful as to make them a fair ground for litigation, and thus for more deliberate investigation." Id. at 63.

5. Career Point has established by the testimony and evidence presented to this Court that Career Point has a substantial likelihood of success on the merits.

6. The Court has also received testimony, that was uncontroverted, of irreparable injury to Career Point, in that Career Point will virtually be required to go out of business if its FY 1990 Cohort Default Rate as published is maintained.

7. The threatened injury to Career Point outweighs any damage which might result to the United States Department of Education, in the event that the requested temporary restraining order is issued.

8. It would not be adverse to the public interest to grant the requested temporary restraining order. Further, a balancing of equities favors the need for students who otherwise cannot receive an education in a trade or vocation to have continuing access to the educational opportunities afforded by Career Point.

9. The Court has heard the presentation of testimony of Mr. Gary Musselman that the FY 1990 Cohort Default Rate for Career Point as published by the Department of Education is grossly flawed, which testimony is uncontroverted.

10. The Court does not find any damage to the Secretary by the issuing of the requested temporary restraining order, and

that if the temporary restraining order is issued, that no bond should be required.

11. The Court finds it appropriate to enter the requested temporary restraining order which is effective immediately.

12. This temporary restraining order shall be extended to the hearing on Career Point's request for preliminary injunction which is set for the 23rd day of March, 1993, at 1:00 o'clock P.m.

In accordance with the foregoing findings, it is hereby ORDERED that Richard W. Riley or his successor, his attorneys, agents, officers, servants, employees, are temporarily required to suspend Career Point's FY 1990 Cohort Default Rate.

IT IS FURTHER ORDERED that Richard W. Riley or his successor, his attorneys, agents, officers, servants, employees, are temporarily enjoined from publishing Career Point's FY 1990 Cohort Default Rate.

IT IS FURTHER ORDERED that Richard W. Riley or his successor, his attorneys, agents, officers, servants, employees, shall officially publish notice of such suspension or invalidation of Career Point's FY 1990 Cohort Default Rate no later than March 15, 1993, to all entities that are identified to the Secretary by Career Point, through the United States Attorney for the Northern District of Oklahoma, no later than March 12, 1993.

IT IS FURTHER ORDERED that no bond be required of Career Point because there is no basis to calculate any damage to the Secretary.

IT IS FURTHER ORDERED that this order shall expire upon entry of a subsequent order on the hearing for a preliminary injunction, scheduled for the 23 day of March, 1993, at 1:00 o'clock P.m.

DATED THIS 12th DAY OF MARCH, 1993, at 4:00 o'clock P.m.


Hon. James O. Ellison
Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AMOS EUGENE TAYLOR, and
BARBARA L. TAYLOR,

Plaintiffs,

VS.

CHUBB GROUP OF INSURANCE
COMPANIES, and NORTHWESTERN
PACIFIC INDEMNITY COMPANY,

Defendants.

No. 90-C-762-E

FILED

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
MAR 15 1993

ENTERED ON DOCKET
MAR 15 1993
DATE

ORDER NUNC PRO TUNC

It has come to the attention of the Court, that a scrivener's error exists in the Court's Order, entered the 11th day of March, 1993 (docket #107). The following shall replace that Order:

COMES NOW FOR CONSIDERATION BY THE COURT Plaintiff's Motion asking this Court to reconsider its Amended Order and Judgment, entered the 21st day of December, 1992, or in the alternative asking this Court to grant Defendant's Motion for New Trial and Motion to Stay Submission of Plaintiff's Amended Application for Attorney Fees (docket #102), and Defendant's Objections thereto (docket #103). Being fully advised in the premises, and after reviewing the pleadings and file herein, the Court finds that the Motion of Plaintiff to Reconsider and Brief in Support fails to demonstrate any error in the Court's Order entered the 21st day of December, 1992.


IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Reconsideration, or in the alternative for new trial and to stay submission of Plaintiff's amended application for attorney fees (docket #102) is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the parties are to appear before this Court at 3:00 p.m. on the 9th day of April, 1993, for a hearing with respect to Plaintiff's application for attorney fees.

ORDERED this 10th day of March, 1993.

SO ORDERED this 15th day of March, 1993.

109


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE MAR 15 1993
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 15 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BILLY G. COX
BETTY M. COX,
Plaintiffs;

v.

J.C. RENFROE & SONS, INC.,
Defendant.

Case No. 92-C-981 C

ORDER OF DISMISSAL WITH PREJUDICE

On this 15th day of March, 1993, the Court having considered the motion of Plaintiffs to dismiss the above cause of action with prejudice from all further litigation against Defendant, does hereby grant their motion to dismiss with prejudice.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff Billy G. Cox and Betty M. Cox's cause of action, Case No. 92-C-981-C alleging liability of defendant J.C. Renfroe & Sons, Inc. for injuries arising out of events of September 20th, 1990, is dismissed with prejudice from all further litigation of this cause of action against said defendant.


HONORABLE H. DALE COOK

District Judge, U.S. District
Court of the Northern District
of Oklahoma

ENTERED ON DOCKET

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DATE ~~MAR 15 1993~~

FILED

MAR 12 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 93-C-0102B

PARAGON FILMS, INC.,)
an Oklahoma corporation)
)
Plaintiff,)
)
vs.)
)
INTERNATIONAL PLASTICS)
PRODUCTS OF AMERICA, INC.,)
an Ohio corporation, and)
THEODORE GERBER, an individual)
)
Defendants.)

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON THIS 12th day of March, 1993, the Plaintiff's Motion to Dismiss with Prejudice the claims of Plaintiff brought against Defendants International Plastics Products of America, Inc. and Theodore Gerber in the Complaint filed herein on February 3, 1993 comes before the Court. The Court notes that counsel for Defendants has consented to the entry of an Order of Dismissal with Prejudice.

WHEREFORE, IT IS ORDERED THAT the Plaintiff's Complaint is dismissed with prejudice.

UNITED STATES DISTRICT JUDGE

SUBMITTED BY:

Charles Greenough (OBA #12311)
DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON
320 South Boston, Suite 500
Tulsa, Oklahoma 74103
(918) 582-1211
Attorneys for the Plaintiff
Paragon Films, Inc.

ENTERED ON DOCKET

DATE 3-15-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DANIEL DRAPP,

Plaintiff,

vs.

Case No. 92 C 423 B

J & B MANAGEMENT CO., a New
Jersey General Partnership;
BERNARD M. RODIN, a General
Partner; QUAIL PLAZA APTS., LTD.
d/b/a QUAIL PLAZA APARTMENTS;
and CAROLYN GRAMLICH, individ-
ually and in her respective
capacity,

Defendants.

FILED

MAR 12 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT


DISMISSAL WITH PREJUDICE

COMES NOW, the Plaintiff, DANIEL DRAPP, and hereby dismisses with prejudice the within action against the Defendants, J & B MANAGEMENT CO., a New Jersey General Partnership; BERNARD M. RODIN, a General Partner; QUAIL PLAZA APTS., LTD. d/b/a QUAIL PLAZA APARTMENTS; and CAROLYN GRAMLICH, individually and in her respective capacity.

Respectfully submitted,

HOWARD AND WIDDOWS, P.C.

By:


Sharon Womack Doty, OBA #14462
2021 South Lewis, Suite 470
Tulsa, OK 74104
(918) 744-7440
Attorneys for Plaintiff

CERTIFICATE OF MAILING

I, Sharon Womack Doty, hereby certify that on the 12th day of March, 1993, a true and correct copy of the foregoing was mailed with postage prepaid thereon to the following:

Mark W. Dixon
Mapco Plaza Building
1717 S. Boulder, Suite 200
Tulsa, OK 74119


SHARON WOMACK DOTY

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 11 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

RONALD LEE SCOTT,

Plaintiff,

-vs-

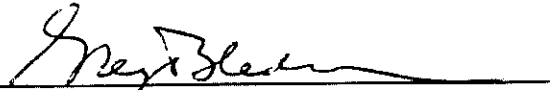
Case No. 92-C-65-B

OCCIDENTAL PETROLEUM
CORPORATION, a Delaware
corporation, and OCCIDENTAL
PETROLEUM SERVICES, INC.,
a California corporation,

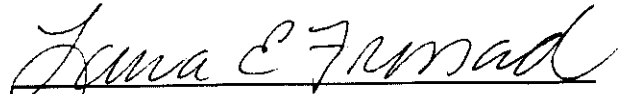
Defendants.

**STIPULATION OF
DISMISSAL WITH PREJUDICE**

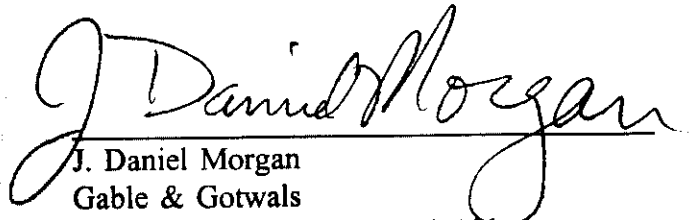
Plaintiff, Ronald Lee Scott ("Scott") and Defendants, Occidental Petroleum Corporation ("OPI") and Occidental Petroleum Services, Inc. ("OPSI"), collectively "Defendants", hereby dismiss with prejudice all claims, counterclaims and causes of action which were asserted or which could have been asserted in the above-captioned case, and further covenant not to sue the opposing party or parties on any claim or cause of action presently in existence because of the above-captioned case. Each party will bear his/its own attorneys' fees and costs.



D. Gregory Bledsoe
1515 S. Denver Avenue
Tulsa, OK 74119-3899



Laura E. Frossard
1408 S. Denver Avenue
Tulsa, OK 74119
ATTORNEYS FOR PLAINTIFF



J. Daniel Morgan
Gable & Gotwals
20th Floor, Fourth National Bldg.
Tulsa, OK 74119
ATTORNEYS FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 1 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM, INC.,
an Oklahoma corporation,

Plaintiff,

vs.

LEE HAMPTON, INC., a foreign
corporation, KENNETH L. KARSTEN,
an individual, and JOHN H. HOULT,
an individual,

Defendants.

Case No. 91-C-839-E

ENTERED ON DOCKET
MAR 12 1993
DATE

ADMINISTRATIVE CLOSING ORDER

Thrifty Rent-A-Car System, Inc. ("Thrifty") and the Defendants, Lee Hampton, Inc. ("Hampton"), John H. Hoult ("Hoult"), and Kenneth L. Karsten ("Karsten"), have settled this action pursuant to the terms of a Settlement and Release Agreement dated January 29, 1993. Under the terms of that Agreement, Hampton, Hoult, and Karsten have agreed to pay Thrifty a sum of money by a date certain. The Settlement and Release Agreement gives Thrifty the right to reopen this case if certain events occur in the future.

It is hereby Ordered that the Clerk administratively terminate this action in his records, without prejudice to the right of Thrifty to reopen this action for the purpose of enforcing its rights under the terms of the Settlement and Release Agreement.

IT IS SO ORDERED this 11th day of March, 1993.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE MAR 12 1993

ERIC W. TAYLOR,

Plaintiff,

v.

Case No. 91-C-760-E

NEW ORLEANS VEDIC SOCIETY,
INC., and/or NEW ORLEANS
VEDIC SOCIETY, INC., d/b/a
TOUCHSTONE DESIGN and/or
TOUCHSTONE DESIGN and
VINCENT TOSH, and
MID-CENTURY INSURANCE COMPANY,

Defendants.

FILED

MAR 11 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Pursuant to the Stipulation of Dismissal With Prejudice filed herein, IT IS ORDERED that all claims asserted by Plaintiff, Eric W. Taylor, or Defendant, New Orleans Vedic Society, Inc., sometimes also known as Touchstone Design, or Defendant, Vincent Tosh, or Defendant, Mid-Century Insurance Company, against the other in this action are dismissed with prejudice. Each party shall bear their own attorney fees and costs.

DATED March 11, 1993.


UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE **MAR 12 1993**

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ELVEREZ G. ALLEN a/k/a ELVEREZ
GARLAND ALLEN; MARCIA J. ALLEN
a/k/a MARCIA JO ALLEN; COUNTY
TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

CIVIL ACTION NO. 93-C-50-E

FILED

1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 11th day
of March, 1993. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendant, County Treasurer, Tulsa County, Oklahoma appears
by J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; the Defendant, Board of County Commissioners, Tulsa
County, Oklahoma, appears not, having previously disclaimed any
right, title or interest in the subject property; and the
Defendants, Elverez G. Allen a/k/a Elverez Garland Allen and
Marcia J. Allen a/k/a Marcia Jo Allen, appear not, but make
default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Elverez G. Allen a/k/a
Elverez Garland Allen, acknowledged receipt of Summons and
Complaint on February 3, 1993; that the Defendant, Marcia J.
Allen a/k/a Marcia Jo Allen acknowledged receipt of Summons and

Complaint on February 2, 1993; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 22, 1993 (the date shown is January 22, 1992 which is a scrivener's error); and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 22, 1993.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer on February 23, 1993; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on February 23, 1993, disclaiming any right, title or interest in the subject property; and that the Defendants, Elverez G. Allen a/k/a Elverez Garland Allen and Marcia J. Allen a/k/a Marcia Jo Allen, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eleven (11), Block Eleven (11), Park Plaza South III, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on August 14, 1989, the Defendants, Elverez G. Allen and Marcia J. Allen, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of

Veterans Affairs, their mortgage note in the amount of \$100,000.00, payable in monthly installments, with interest thereon at the rate of 7.5 percent (7.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Elverez G. Allen and Marcia J. Allen, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated August 14, 1989, covering the above-described property. Said mortgage was recorded on August 15, 1989, in Book 5201, Page 791, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Elverez G. Allen a/k/a Elverez Garland Allen and Marcia J. Allen a/k/a Marcia Jo Allen, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Elverez G. Allen a/k/a Elverez Garland Allen and Marcia J. Allen a/k/a Marcia Jo Allen, are indebted to the Plaintiff in the principal sum of \$97,014.46, plus interest at the rate of 7.5 percent per annum from August 1, 1992 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$82.00 which became a lien on the

property. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that the Defendants, Elverez G. Allen a/k/a Elverez Garland Allen and Marcia J. Allen a/k/a Marcia Jo Allen, are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Elverez G. Allen a/k/a Elverez Garland Allen and Marcia J. Allen a/k/a Marcia Jo Allen, in the principal sum of \$97,014.46, plus interest at the rate of 7.5 percent per annum from August 1, 1992 until judgment, plus interest thereafter at the current legal rate of 3.21 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$82.00 for personal property taxes for the year 1992, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Elverez G. Allen a/k/a Elverez Garland Allen, Marcia

J. Allen a/k/a Marcia Jo Allen, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, the Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Elverez G. Allen a/k/a Elverez Garland Allen and Marcia J. Allen a/k/a Marcia Jo Allen, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, according to Plaintiff's election with or without appraisement, the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of

\$82.00, personal property taxes which are
currently due and owing.


The surplus from said sale, if any, shall be deposited with the
Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of any
right, title, interest or claim in or to the subject real
property or any part thereof.


UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendant,
County Treasurer,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 93-C-50-E

PP/esr

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR 12 1993

FILED

MAR 11 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

TULSA MUNICIPAL AIRPORT TRUST,
a public trust, and AMERICAN
AIRLINES, INC., a Delaware
corporation,

Plaintiffs,

vs.

Case No. 89-C-908-E

GIFFELS ASSOCIATES, INC.,
a Michigan corporation,
TMSI CONTRACTORS, INC., a
California corporation, and
INSURANCE COMPANY OF NORTH
AMERICA, a Pennsylvania
corporation,

Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

It is hereby stipulated, pursuant to Fed. R. Civ. P. 41(a)(1), that the Plaintiffs, Tulsa Municipal Airport Trust and American Airlines, Inc., dismiss with prejudice their claims against the Defendants TMSI Contractors, Inc., and Insurance Company of North America.

Respectfully submitted,

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.

By

Richard T. McGonigle

Richard T. McGonigle,
OBA #11675
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-4570

ATTORNEYS FOR PLAINTIFFS, TULSA
MUNICIPAL AIRPORT TRUST AND
AMERICAN AIRLINES, INC.

AND

GABLE & GOTWALS

By 

Sidney G. Dunagan, OBA #2524
James W. Rusher, OBA #
2000 Fourth National Bldg.
Tulsa, Oklahoma 74119
(918) 582-9201

ATTORNEYS FOR DEFENDANT,
GIFFELS ASSOCIATES, INC.

AND



Randall J. Snapp, OBA #11169
124 East 4th Street
Tulsa, Oklahoma 74103
(918) 584-5182

ATTORNEYS FOR DEFENDANTS, TMSI
CONTRACTORS, INC. AND INSURANCE
COMPANY OF NORTH AMERICA

DATE **MAR 12 1993**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

FILED

MAR 11 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

TULSA MUNICIPAL AIRPORT TRUST,
a public trust, and AMERICAN
AIRLINES, INC., a Delaware
corporation,

Plaintiffs,

vs.

Case No. 89-C-908-E

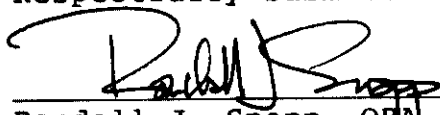
GIFFELS ASSOCIATES, INC.,
a Michigan corporation,
TMSI CONTRACTORS, INC., a
California corporation, and
INSURANCE COMPANY OF NORTH
AMERICA, a Pennsylvania
corporation,

Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

It is hereby stipulated, pursuant to Fed. R. Civ. P. 41(a)(1), that the Defendants, TMSI Contractors, Inc., and Insurance Company of North America, dismiss with prejudice their counterclaims against the Plaintiffs, Tulsa Municipal Airport Trust and American Airlines, Inc.

Respectfully submitted,

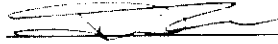


Randall J. Snapp, OBA # 11169
124 East 4th Street
Tulsa, Oklahoma 74103
(918) 584-5182

ATTORNEYS FOR DEFENDANTS, TMSI
CONTRACTORS, INC. AND INSURANCE
COMPANY OF NORTH AMERICA

AND


GABLE & GOTWALS

By 
Sidney G. Dunagan, OBA #2524
James W. Rusher, OBA #
2000 Fourth National Bldg.
Tulsa, Oklahoma 74119
(918) 582-9201

ATTORNEYS FOR DEFENDANT,
GIFFELS ASSOCIATES, INC.

AND

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.

By 
Richard T. McGonigle,
OBA #11675
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-4570

ATTORNEYS FOR PLAINTIFFS, TULSA
MUNICIPAL AIRPORT TRUST AND
AMERICAN AIRLINES, INC.

ENTERED ON DOCKET
DATE MAR 12 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAR 11 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

TULSA MUNICIPAL AIRPORT TRUST,
a public trust, and AMERICAN
AIRLINES, INC., a Delaware
corporation,

Plaintiffs,

vs.

Case No. 89-C-908-E

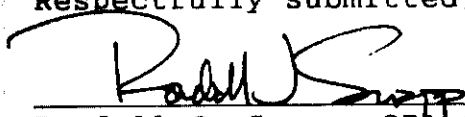
GIFFELS ASSOCIATES, INC.,
a Michigan corporation,
TMSI CONTRACTORS, INC., a
California corporation, and
INSURANCE COMPANY OF NORTH
AMERICA, a Pennsylvania
corporation,

Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

It is hereby stipulated, pursuant to Fed. R. Civ. P.
41(a)(1), that the Defendants, TMSI Contractors, Inc., and
Insurance Company of North America, dismiss with prejudice
their cross-claims against the Defendant, Giffels
Associates, Inc.

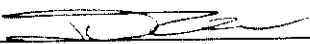
Respectfully submitted,


Randall J. Snapp, OBA # 11169
124 East 4th Street
Tulsa, Oklahoma 74103
(918) 584-5182

ATTORNEYS FOR DEFENDANTS, TMSI
CONTRACTORS, INC. AND INSURANCE
COMPANY OF NORTH AMERICA

AND

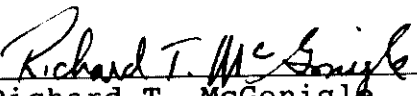
GABLE & GOTWALS

By 
Sidney G. Dunagan, OBA #2524
James W. Rusher, OBA #
2000 Fourth National Bldg.
Tulsa, Oklahoma 74119
(918) 582-9201

ATTORNEYS FOR DEFENDANT,
GIFFELS ASSOCIATES, INC.

AND

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.

By 
Richard T. McGonigle,
OBA #11675
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-4570

ATTORNEYS FOR PLAINTIFFS, TULSA
MUNICIPAL AIRPORT TRUST AND
AMERICAN AIRLINES, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MELVIN EDWARDS,
Petitioner,
vs.
STANLEY GLANZ,
Respondent.

No. 93-C-137-E

FILED

1993

EOO 3/12/93


Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Petitioner has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. However, Petitioner has failed to submit the proper filing fee or a motion for leave to proceed in forma pauperis. In addition, the court notes that Petitioner must first exhaust his state court remedies before bringing his claims to the federal court. See e.g., Picard v. Connor, 404 U.S. 270 (1971).

Thus, for all the above reasons, Petitioner's application for a writ of habeas corpus is hereby dismissed.

SO ORDERED THIS 8th day of March, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

DATE MAR 12 1993

FILE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JERRY GRAHAM,

Petitioner,

vs.

RON CHAMPION, et al.,

Respondents.

No. 92-C-870-E

1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILE

1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Petitioner has sent a letter to the court asking for his \$5.00 filing fee back since no action was ever taken on his case. He contends that his action is moot since he is being released from custody.

Unfortunately, the court is unable to refund Petitioner's filing fee, as the fee has already been accepted by the court. The court shall, however, order the Clerk to send Petitioner the stamp he submitted with his letter. Because Petitioner's action was not challenging the validity of his conviction, the court agrees that his claims are now moot, and shall dismiss this action accordingly.

IT IS, THEREFORE, HEREBY ORDERED that:

1. Petitioner's request for a filing fee refund is denied;
2. The Clerk shall return to Petitioner his stamp; and
3. Petitioner's action is dismissed.

SO ORDERED THIS 8th day of March, 1993.

James O. Ellison
JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

4

ENTERED ON DOCKET
DATE MAR 11 1993

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR - 8 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ARCHIE MENDENHALL,

Plaintiff,

vs.

KOCH SERVICE, INC., a
Corporation,

Defendant.

No. 92-C-290-B

JUDGMENT

In accord with the Order filed on the 8 day of March, 1993, sustaining Defendant's Motion for Summary Judgment, the Court hereby enters judgment in favor of Defendant Koch Service, Inc. and against the Plaintiff Archie Mendenhall. Costs are assessed against Plaintiff if timely applied for pursuant to Local Rule 6 and each party is to pay its own attorneys fees.

DATED this 8th day of March, 1993.


THOMAS R. BRETT
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RONALD W. SHIVELY a/k/a RONALD
SHIVELY; CYNTHIA L. SHIVELY
a/k/a CYNTHIA SHIVELY n/k/a
CYNTHIA L. CARVER; FIRST FEDERAL
SAVINGS BANK OF OKLAHOMA;
RALPH C. BURKE; COUNTY TREASURER,
Rogers County, Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Rogers County, Oklahoma; and
BANK OF CHELSEA, an Oklahoma
banking institution,

Defendants.

FILED

MAR 11 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

EDD 3/11/93

CIVIL ACTION NO. 91-C-394-C

DEFICIENCY JUDGMENT

This matter comes on for consideration this 10 day
of March, 1993, upon the Motion of the Plaintiff, United
States of America, acting on behalf of the Secretary of Veterans
Affairs, for leave to enter a Deficiency Judgment. The Plaintiff
appears by Tony M. Graham, United States Attorney for the
Northern District of Oklahoma, through Phil Pinnell, Assistant
United States Attorney, and the Defendants, Ronald W. Shively
a/k/a Ronald Shively and Cynthia L. Shively a/k/a Cynthia Shively
n/k/a Cynthia L. Carver, appear neither in person nor by counsel.

The Court being fully advised and having examined the
court file finds that a copy of Plaintiff's Motion was mailed by
first-class mail to Ronald W. Shively a/k/a Ronald Shively, P.O.
Box 434, Claremore, Oklahoma 74017, and Cynthia L. Shively a/k/a

NOTE

Cynthia Shively n/k/a Cynthia L. Carver, 1606 West 59th Street, Parkview Terrace Apartments, Tulsa, Oklahoma 74107, and to all answering parties and/or counsel of record.

The Court further finds that the amount of the Judgment rendered on June 24, 1992, in favor of the Plaintiff United States of America, and against the Defendants, Ronald W. Shively a/k/a Ronald Shively and Cynthia L. Shively a/k/a Cynthia Shively n/k/a Cynthia L. Carver, with interest and costs to date of sale is \$43,485.38.

The Court further finds that the appraised value of the real property at the time of sale was \$13,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered June 24, 1992, for the sum of \$11,578.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 26th day of February, 1993.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Ronald W. Shively a/k/a Ronald Shively and Cynthia L. Shively a/k/a Cynthia Shively n/k/a Cynthia L. Carver, as follows:

Principal Balance Plus Pre-Judgment Interest as of June 24, 1992	\$41,603.33
Interest From Date of Judgment to Sale	580.47
Late Charges to Date of Judgment	344.32
Appraisal by Agency	300.00
Abstracting	212.50
Publication Fees of Notice of Sale	190.06
Publication Fees of Confirmation of Sale	29.70
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$43,485.38
Less Credit of Appraised Value	- <u>13,000.00</u>
DEFICIENCY	\$30,485.38

plus interest on said deficiency judgment at the legal rate of 3.21 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

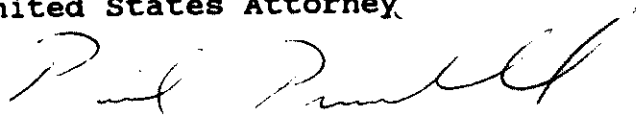
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Ronald W. Shively a/k/a Ronald Shively and Cynthia L. Shively a/k/a Cynthia Shively n/k/a Cynthia L. Carver, a deficiency judgment in the amount of \$30,485.38, plus interest at the legal rate of 3.21 percent per annum on said deficiency judgment from date of judgment until paid.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

PP/css

DATE **MAR 11 1993**
FILEDIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR - 8 1993

Richard L. Lawrence, Court Clerk
U.S. DISTRICT COURTARCHIE MENDENHALL,
Plaintiff,

vs.

Case No. 92-C-290-B /

KOCH SERVICE, INC., a
Corporation,

Defendant,

ORDER

Now before the Court for decision is the Motion for Summary Judgment, pursuant to Fed.R.Civ.P. 56, of the defendant, Koch Service, Inc. ("Koch") against the plaintiff, Archie Mendenhall. For the reasons set forth hereafter, the Court concludes that the defendant's motion should be sustained.

The following facts are undisputed:

1. Koch employed Mr. Mendenhall as a truck driver.
2. Truck driver's in the employ of Koch must meet all of the Department of Transportation's requirements for truck driver certification.
3. One of the Department of Transportation's requirements for truck driver certification is that a driver may not be an insulin-dependent diabetic.
4. Mr. Mendenhall was diagnosed as a diabetic in October of 1990 and prescribed insulin as treatment.
5. Mr. Mendenhall went on a medical leave of absence on October 1, 1990 due to his diabetic condition.

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6. Mr. Mendenhall was unable to return to work and was put on long term disability on March 3, 1991.

Pursuant to Fed.R.Civ.P. 56, summary judgment is appropriate when "there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986); Windon Third Oil and Gas v. Fed. Deposit Ins. Corp., 805 F.2d 342, 345 (10th Cir. 1986). cert. denied 480 U.S. 947 (1987). In Celotex, it is stated:

"[T]he plain language of Rule 56(c) mandates entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."
477 U.S. at 322.

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material fact ..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to material facts." Matsushita v. Zenith, 475 U.S. 574, 585-86, 106 S.Ct. 1348, 1355, 89 L.Ed.2d 538 (1986).

A party opposing a properly supported motion for summary judgment may not rest upon mere allegations or denials of his pleadings, but must affirmatively prove specific facts showing there is a genuine issue of material fact for trial. In Anderson v. Liberty Lobby, Inc., supra the Court stated that:

"The mere existence of a scintilla of evidence in support

of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff."

Anderson, 477 U.S. at 252.

The Tenth Circuit requires "more than pure speculation to defeat a motion for summary judgment" under the standards set by Celotex and Anderson. Setliff v. Memorial Hosp. of Sheridan County, 850 F.2d 1384, 1393 (10th Cir. 1988).

Plaintiff does not contest the fact that Koch could not permit him to continue being a truck driver after he became diabetic and dependent on insulin. Rather, he alleges that pursuant to Oklahoma law Koch has a duty to either create a new job for him or transfer him to a vacant existing position. Koch counters that no such duty exists.

Okla. Stat. tit. 25, § 1302 provides:

A. It is a discriminatory practice for an employer:

1. To fail or refuse to hire, to discharge, or otherwise to discriminate against an individual with respect to compensation or the terms, conditions, privileges or responsibilities of employment, because of race, color, religion, sex, national origin, age, or handicap¹ unless such action is related to a bona fide occupational qualification reasonably necessary to the normal operation of the employer's business or enterprise ...

¹ Pursuant to Okla. Stat. tit. 25, § 1301(4) a "'handicapped person' means a person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such impairment or is regarded as having such an impairment ..." For purposes of its motion for summary judgment Koch concedes that Mr. Mendenhall's insulin-dependent diabetes makes him a handicapped person under this definition.

The Oklahoma Human Rights Commission has promulgated rules and guidelines intended to clarify and implement Oklahoma's Anti-Discrimination Act, Title 25, Oklahoma Statutes 1981, § 1101 et. seq. The introduction to the interpretive guidelines states "that no qualified handicapped person shall on account of handicap, be subjected to discrimination in employment ..." (Oklahoma Human Rights Commission Rules and Guidelines § IX(A) [hereinafter "Guidelines"])).

The Commission espouses the federal Rehabilitation Act of 1973's definition of "qualified" handicapped person. 29 C.F.R. § 1613.702(f). A qualified handicapped person is "a person with a handicap who with reasonable accommodation can perform the essential functions of the job in question." (Guidelines § IX(B)(2)).

The Guidelines state that an employer "shall make reasonable accommodation to the known limitations of an otherwise qualified handicapped applicant or employee unless the employer can demonstrate that the accommodation would impose an undue hardship." (Guidelines § IX(C)(a)). Reasonable accommodation may include modifying work sites or common areas, restructuring or modifying work or schedules, or modifying equipment. (Guidelines § IX(C)(b)(1) & (2)).

Oklahoma state courts have not addressed the issue of whether under Oklahoma's anti-discrimination statute the employer's duty to reasonably accommodate requires finding a new position for a handicapped employee. However, Oklahoma's anti-discrimination

statute expressly states that its purpose is to "provide for execution within the state of the policies embodied in ... Section 504 of the federal Rehabilitation Act of 1973 ..." Okla. Stat. tit. 25, § 1101(a). Case law interpreting the federal Rehabilitation Act is, therefore, persuasive.

The identical issue has been addressed many times by federal courts in actions brought pursuant to the federal Rehabilitation Act. The great majority of courts have held that "under the Rehabilitation Act of 1973, 29 U.S.C. § 701-96 (1982), where there is a duty to reasonably accommodate handicapped employees, the employer is not required to 'find another job for an employee who is not qualified for the job he or she was doing, ... [unless there are] alternative employment opportunities reasonably available under employer's existing policies.'" Griffin v. Defense Mapping Agency, 864 F.2d 1579, 1580 (Fed. Cir. 1989) quoting School Bd. v. Arline, 480 U.S. 273, 289 n.19, 107 S.Ct. 1123, 1131 n. 19, 94 L.Ed.2d 307 (1987); see also Guillot v. Garrett, 970 F.2d 1320, 1326-27 (4th Cir. 1992); Mackie v. Runyon, 804 F.Supp. 1508 (M.D. Fla. 1992) citing Wimbley v. Bolger, 642 F.Supp. 481, 486 (W.D. Tenn. 1986), Carty v. Carlin, 623 F.Supp. 1181, 1188-89 (D. Md. 1985), and Alderson v Postmaster Gen. of United States, 598 F.Supp. 49, 55 (W.D. Okla. 1984); Alexander v. Frank, 777 F.Supp. 517, 524 (N.D. Tex. 1991); Fowler v. Frank, 702 F.Supp. 143, 147 (E.D. Mich. 1988); Fields v. Lying, 705 F.Supp. 1134, 1137 (D.Md. 1988) aff'd 888 F.2d 1385; Davis v. United States Postal Serv., 675 F.Supp. 225, 233-34 (M.D. Pa. (1987); American Fed'n of Gov't

Employees Local 51 v. Baker, 677 F.Supp. 636, 638 (N.D. Cal. 1987).

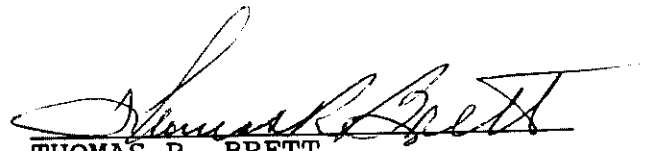
Only if Koch normally requires transfer of its handicapped employees to other jobs under its "existing policies" can it be in violation of the anti-discrimination statute. See Shea v. Tisch, 870 F.2d 786 (1st Cir. 1989); see also, Guillot, 970 F.2d at 1327 Griffin, 864 F.2d at 1580-81. Jeff Gough who is the employee relations supervisor for Koch Industries testified at his deposition that there is no policy within the company requiring that another position be found for handicapped workers. (Telephone Deposition of Jeff Gough at 12). Plaintiff has failed to come forward with specific facts or evidence to show that Koch had such an existing policy.²

CONCLUSION

The duty to accommodate exclusively contemplates reasonable accommodation of a qualified employee's current position and does not include a requirement to transfer an employee to another position. Koch's motion for summary judgment is therefore hereby GRANTED.

IT IS SO ORDERED this 8th day of March, 1993

² Plaintiff proffered deposition testimony of two of Mr. Mendenhall's fellow employees who stated that there were certain jobs in Koch Services and Koch Gathering that Mr. Mendenhall could have done. In addition, Mr. Mendenhall testified that Koch had transferred or created another job for another insulin dependent diabetic who could no longer drive a truck. It cannot be inferred from these statements that Koch had company policies mandating finding new jobs for handicapped employees unable to do the job for which they were hired.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written in dark ink.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE MAR 11 1993

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 9 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

SCOTT MICHAEL WEISBERG,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 91-C-359-B

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed February 4, 1993 in which the Magistrate Judge recommended that this case should be **administratively** closed given the lack of prosecution.

No exceptions or objections have **been** filed and the time for filing such exceptions or objections has expired.

After careful consideration of the **record** and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate Judge should be and hereby is adopted and affirmed.

It is, therefore, Ordered that **this case is** to be administratively closed given the lack of prosecution.

SO ORDERED THIS 8 day of Mar, 1993.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
MAR 11 1993
DATE _____

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CANDIE PAPER,

Plaintiff,

v.

MONTEREY HOUSE U.S.A., INC.,
a Texas corporation, BHC
ACQUISITION CORPORATION, d/b/a
MONTEREY HOUSE/MONTEREY'S TEX
MEX CAFE, an Oklahoma corporation,
MONTEREY'S TEX MEX CAFE OF
BARTLESVILLE, OKLAHOMA, and
RUSSELL CASH,

Defendants.

Case No. 91-C-947 B

FILED
MAR 10 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

UPON the joint stipulation of the Plaintiff, Candie Paper and the Defendant, Monterey House U.S.A., Inc., BHS Acquisition Corporation d/b/a Monterey House/Monterey's Tex Mex Cafe, Monterey's Tex Mex Cafe of Bartlesville, Oklahoma, for the dismissal of the above-captioned case with prejudice, and good cause having been shown,

IT IS ORDERED, ADJUDGED AND DECREED that the instant action is dismissed with prejudice, each side to bear her or its own costs, expenses and attorneys' fees.

UNITED STATES DISTRICT JUDGE

FILED
MAR 11 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR 10 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

TOMMY D. HILL,

Plaintiff,

vs.

Case No. 92-C-968-*EC*

BADGER METER, INC.,

Defendant.

ORDER OF DISMISSAL WITH PREJUDICE

Upon the Joint Motion of the parties, this Court hereby dismisses with prejudice the above styled action because Plaintiff's action is barred by the applicable statute of limitations.

IT IS SO ORDERED.

DATED this 10 day of March, 1993.

(Signed) *M. Dale Spick*

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:

Jeff Nix
Jeff Nix
Attorney for Plaintiff

Kimberly A. Lambert
Kimberly A. Lambert
Attorney for Defendant

ENTERED ON DOCKET
DATE MAR 11 1993

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RACHEL E. UNDERWOOD n/k/a
RACHEL E. COLWELL; JAMES T.
SCHAFFER; EVE, INC., an Oklahoma
corporation; STATE OF OKLAHOMA
ex rel. OKLAHOMA EMPLOYMENT
SECURITY COMMISSION; COUNTY
TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma; and STATE OF OKLAHOMA
ex rel. OKLAHOMA TAX COMMISSION,

Defendants.

CIVIL ACTION NO. 92-C-853-B

FILED

MAR 10 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 10th day
of March, 1993. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Wyn Dee Baker, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendant, State of
Oklahoma ex rel. Oklahoma Tax Commission, appears by its attorney
M. Diane Allbaugh; the Defendant, Eve, Inc., an Oklahoma
corporation, appears not, having previously filed its Answer and
Disclaimer; the Defendant, State of Oklahoma ex rel. Oklahoma
Employment Security Commission, appears not, having previously

NOTE: THIS
BY
PROCEEDING
UPON RECEIPT.

filed its Disclaimer; and the Defendants, Rachel E. Underwood n/k/a Rachel E. Colwell and James T. Schafer, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, Rachel E. Underwood n/k/a Rachel E. Colwell, acknowledged receipt of Summons and Complaint on October 9, 1992; that the Defendant, James T. Schafer, acknowledged receipt of Summons and Complaint on October 9, 1992; that the Defendant, Eve, Inc., an Oklahoma corporation, acknowledged receipt of Summons and Complaint on September 24, 1992; that the Defendant, State of Oklahoma ex rel. Oklahoma Employment Security Commission, acknowledged receipt of Summons and Complaint on October 1, 1992; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on September 24, 1992; that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on September 25, 1992; that Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Amended Complaint on December 7, 1992.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on October 15, 1992 and December 17, 1992; that the Defendant, Eve, Inc., an Oklahoma corporation, filed its Answer and Disclaimer on October 6, 1992;

that the Defendant, State of Oklahoma ex rel. Oklahoma Employment Security Commission, filed its Disclaimer and Consent to Judgment on October 5, 1992; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer, Counterclaim and Cross-Claim on December 24, 1992; and that the Defendants, Rachel E. Underwood n/k/a Rachel E. Colwell and James T. Schafer, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on August 23, 1990, James T. Schafer d/b/a Horizons Services Janitorial filed his voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 90-02438-C. On September 16, 1992, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtor by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action described below.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Nine (9), Block Two (2), HOME LAWN ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on January 29, 1981, Rachel E. Underwood executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, her mortgage note in the amount of \$23,750.00, payable in monthly installments, with interest thereon at the rate of thirteen and one-half percent (13.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Rachel E. Underwood executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated January 29, 1981, covering the above-described property. Said mortgage was recorded on February 2, 1981, in Book 4524, Page 852, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Rachel E. Underwood n/k/a Rachel E. Colwell, made default under the terms of the aforesaid note and mortgage by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Rachel E. Underwood n/k/a Rachel E. Colwell, is indebted to the Plaintiff in the principal sum of \$21,604.42, plus interest at the rate of 13.5 percent per annum from July 1, 1990 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property

which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$212.00, plus penalties and interest, for the year of 1992. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action in the amount of \$236.12 plus penalties and interest by virtue of Income Tax Warrant No. ITI9100537600, dated March 27, 1991, and recorded on April 4, 1991, in Book 5313, Page 0355 in the records of Tulsa County, Oklahoma. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Eve, Inc., an Oklahoma corporation and State of Oklahoma ex rel. Oklahoma Employment Security Commission, disclaim any right, title or interest in the subject real property.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that the Defendant, James T. Schafer, is in default and therefore has no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendant, Rachel E. Underwood n/k/a Rachel E. Colwell, in the principal sum of \$21,604.42, plus interest at the rate of 13.5 percent per annum from July 1, 1990 until judgment, plus interest thereafter at the

current legal rate of 3.21 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment against Defendant, James T. Schafer, in the amount of \$212.00, plus penalties and interest, for ad valorem taxes for the year 1992, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment against Defendant, James T. Schafer, in the amount of \$236.12 plus penalties and interest by virtue of Income Tax Warrant No. ITI9100537600, dated March 27, 1991, and recorded on April 4, 1991, in Book 5313, Page 0355 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, James T. Schafer, Eve, Inc., an Oklahoma corporation, State of Oklahoma ex rel. Oklahoma Employment Security Commission, and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Rachel E. Underwood n/k/a Rachel E. Colwell, to satisfy the money judgment of the Plaintiff

herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$212.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

Fourth:

In payment of the judgment rendered herein in favor of Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

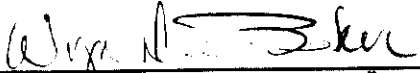
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

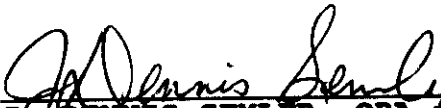
S/ THOMAS R. BRETT


UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


WYN DEE BAKER, OBA #465
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
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Tulsa, OK 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

 OBA 14175 for
M. DIANE ALLBAUGH, OBA #14667
Assistant General Counsel
P. O. Box 53248
Oklahoma City, OK 73152-3248
(405) 521-3141
Attorney for Defendant,
State of Oklahoma ex rel.
Oklahoma Employment Security Commission

Judgment of Foreclosure
Civil Action No. 92-C-853-B

WDB/css

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

333 West Fourth Street, Room 411

TULSA, OKLAHOMA 74103

March 10, 1993

RICHARD M. LAWRENCE
CLERK

(918) 581-7796
(FTS) 745-7796

EOD 3/11/93

IN RE: 92-C-901-C
Bristol Resources v. SL Energy etal

Please be advised that Judge H. Dale Cook entered the following Minute Order in the above styled case:

"Ordered that Plaintiff's Application to Strike Status Hearing of March 30, 1993 is granted. Pursuant to this Court's Order of December 30, 1992, this case is ordered dismissed without prejudice."

Very truly yours,

RICHARD M. LAWRENCE, Clerk

by:

Phillips
Deputy Clerk

CC:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 11 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Robert L. Zink
Plaintiff,

vs.

Case No: 86-C-373-B

Merrill Lynch Pierce Fenner &
Smith and Peter A. Childs,
Defendants.

ORDER TAXING COSTS

On March 8, 1993 a hearing was held in the Office of the Clerk to determine costs to be awarded in the above captioned action. The hearing was held pursuant to an order of the court entered January 25, 1993 instructing the Clerk to conduct a cost hearing on remand. The previous cost hearing held on September 3, 1992 with only the Defendant being present resulted in all costs prayed for being granted by virtue of the non appearance of the Plaintiff. Both parties now being represented, the Clerk

FINDS costs in the amount of \$20.00 will be awarded to the Defendant.

The additional costs prayed for:

Witness Fees:	\$ 220.00
Copies of Papers:	\$ 82.62
Other Costs:	\$1000.00

are disallowed for the following reasons.

On March 26, 1987 the Court ordered arbitration and all claims were

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arbitrated on November 20, 1991 in favor of Defendants. Subsequently the Plaintiff was denied hearing by the Court regarding his federal claims (July 29, 1992) and judgment for the Defendants was entered confirming the award of the Arbitrators.

Insofar as the Court has confirmed the decision of the arbitrators and the Arbitrators have directed "costs" in the amount of \$2,000.00 are assessed against the parties in equal amounts, I must presume the arbitrators and the Court have contemplated the expense of this action to be within the bounds of \$2,000.00 and no further costs were contemplated.

I find those costs in the cost bill filed August 7, 1992 excepting the \$20.00 docket fees, not to be costs eligible for consideration by the Clerk within the meaning of 28 U.S.C. § 1920 or Rule 54 of the Federal rules of Civil Procedures. As such, the Clerk taxes cost for the Defendant and against the Plaintiff in the amount of \$20.00. Parties have five days from the entry of this order to appeal this decision to the Court.


RICHARD M. LAWRENCE, CLERK

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAR 11 1993

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL J. MORGAN; SHELBY R.
MORGAN; COUNTY TREASURER, Tulsa
County, Oklahoma; and BOARD OF
COUNTY COMMISSIONERS, Tulsa
County, Oklahoma,

Defendants.

FILED

MAR 10 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 91-C-951-B

DEFICIENCY JUDGMENT

This matter comes on for consideration this 9th day
of March, 1993, upon the Motion of the Plaintiff,
United States of America, acting on behalf of the Secretary of
Veterans Affairs, for leave to enter a Deficiency Judgment. The
Plaintiff appears by Tony M. Graham, United States Attorney for
the Northern District of Oklahoma, through Wyn Dee Baker,
Assistant United States Attorney, and the Defendants, Michael J.
Morgan and Shelby R. Morgan, appear neither in person nor by
counsel.

The Court being fully advised and having examined the
court file finds that a copy of Plaintiff's Motion was mailed by
first-class mail to Michael J. Morgan and Shelby R. Morgan,
Route 1, Box 41, Haskell, Oklahoma 74436, and to all answering
parties and/or counsel of record.

The Court further finds that the amount of the Judgment
rendered on July 1, 1992, in favor of the Plaintiff United States
of America, and against the Defendants, Michael J. Morgan and

Shelby R. Morgan, with interest and costs to date of sale is \$49,165.00.

The Court further finds that the appraised value of the real property at the time of sale was \$20,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered July 1, 1992, for the sum of \$17,334.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 2nd day of March, 1993.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Michael J. Morgan and Shelby R. Morgan, as follows:

Principal Balance Plus Pre-Judgment Interest as of 07/01/92	\$47,106.91
Interest From Date of Judgment to Sale	655.94
Late Charges to Date of Judgment	415.84
Appraisal by Agency	500.00
Abstracting	121.00
Publication Fees of Notice of Sale	140.31
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$49,165.00
Less Credit of Appraised Value	- <u>20,000.00</u>
DEFICIENCY	\$29,165.00

plus interest on said deficiency judgment at the legal rate of 3.21 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

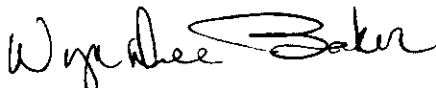
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Michael J. Morgan and Shelby R. Morgan, a deficiency judgment in the amount of \$29,165.00, plus interest at the legal rate of 3.21 percent per annum on said deficiency judgment from date of judgment until paid.

THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney



WYN DEE BAKER, OBA #465
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

WDB/css

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LARRY KATZER,

Plaintiff,

v.

BALDOR ELECTRIC CO.,

Defendant.

Case No. 89-C-703-C

FILED

MAR 11 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

This action came on for jury trial ~~before~~ the Court, Honorable H. Dale Cook, District Judge, presiding, and the issues having ~~been~~ duly tried and the jury having rendered its verdict,

IT IS ORDERED AND ADJUDGED that the Plaintiff, Larry Katzer, take nothing from the Defendant, Baldor Electric Company, and that the action be dismissed on the merits, and that the Defendant, Baldor Electric Company, recover of the Plaintiff, Larry Katzer, costs of action.

DATED at Tulsa, Oklahoma, this 10th day of March, 1993.


HONORABLE H. DALE COOK

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAR 11 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

United States of America,
Plaintiff,

v.

Jack Eskridge, Jr et al,
Defendants.


Case No. 92-C-895-C

ADMINISTRATIVE CLOSING ORDER

The Defendant, William T Lawrence Jr having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 11 day of March, 1993.


United States District Judge

FILED

MAR 11 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:

REPUBLIC FINANCIAL
CORPORATION, an Oklahoma
corporation,

Debtor.

R. DOBIE LANGENKAMP,
Successor Trustee,

Plaintiff,

vs.

MACK BAUGHN and
BARBARA BAUGHN,

Defendants.

Case No. 84-01460-W
(Chapter 11)

ENTERED ON DOCKET
DATE MAR 11 1993

Dist. Ct. No. 91-C-244-E

86-0374-C
Adv. No. 86-0347-C

JUDGMENT

Pursuant to the Memorandum Opinion entered April 10, 1992 granting the Successor Trustee's Motion for Summary Judgment, the Court

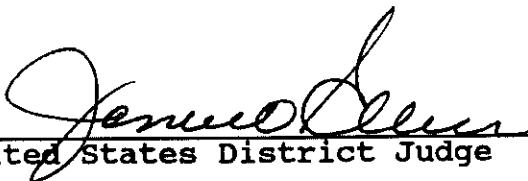
FINDS the amount of avoidable transfer is \$53,045.36, less \$752.97 interest accrued within 45 days prior to the date of the transfer for a net avoidable transfer of \$52,292.39. Therefore, it is

ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment against Defendants jointly and severally in the amount of \$52,292.39 plus costs of this action. Interest shall accrue on the principal amount of the judgment at the rate of 3.67% per annum from the date of entry hereof. It is further

ORDERED, ADJUDGED AND DECREED that Defendants' unsecured claim in the estate, if any, shall be disallowed until the judgment is paid.

This Judgment shall become a part of the Memorandum Opinion upon entry.

Done this 8th day of March, 1993.


United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 11 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

TRAVELERS INDEMNITY COMPANY,)
)
Plaintiff,)
)
vs.)
)
FEDERAL DEPOSIT INSURANCE CORP.,)
in its corporate capacity; and)
J.F. STOABS & SONS, INC.,)
an Oklahoma corporation,)
)
Defendants.)

Case No. 92-C-842-E

ENTERED ON DOCKET
DATE MAR 11 1993

JOURNAL ENTRY

This matter came on for hearing on March 2, 1993, before the Honorable Magistrate John L. Wagner, whereupon it was announced by the respective parties, Travelers Indemnity Company ("Travelers") represented by R. Hayden Downie, and Federal Deposit Insurance Corporation ("FDIC") in its corporate capacity represented by Sheila M. Powers, and J.F. Stoabs & Sons, Inc. ("Stoabs") an Oklahoma corporation represented by Robert P. Kelly. That the matters between the parties as plead have been resolved and that the parties request that the following facts be found by the Court as being true and correct and are stipulated to by said parties as follows:

1. That Plaintiff, Travelers, pay the sum of Eighty-Five Thousand Nine Hundred Eight and 65/100 (\$85,908.65) Dollars to the Defendant, FDIC, for the loss of the building.
2. That Plaintiff, Travelers, pay Defendant, Stoabs, the sum of Nineteen Thousand Five Hundred Ninety-One and 35/100 (\$19,591.35) Dollars for loss of the personal property.
3. That Plaintiff, Travelers, pay Nu-Sheen Enterprises through February 28, 1993, for all storage costs of the personal property

as a result of the fire.

4. That Defendants, FDIC and Stoabs, acknowledge receipt of the sums heretofore plead, and hereby release Plaintiff, Travelers, from any further claims under its insurance policy #660-488J238A-TIL-91 as a result of the loss to the real and personal property owned by Stoabs, in Osage County, State of Oklahoma, described as:

Lots Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Block Six (6), Pettit Addition to the City of Hominy, Osage County, Oklahoma,

which loss occurred on August 26, 1991.

5. That the Defendants acknowledge that the payments to them are in full satisfaction and discharge of all obligations of the Plaintiff, Travelers, from all liability heretofore plead under the terms of insurance policy #660-488J238A-TIL-91, issued to Defendant, Stoabs.

6. That the Defendants, FDIC and Stoabs, agree and stipulate that from March 1, 1993, that Stoabs shall be responsible for any and all storage costs to Nu-Sheen Enterprises for personal property Nu-Sheen is holding, and shall hold Plaintiff, Travelers, harmless from any further storage bills for said property.

7. That Defendant, Stoabs, shall remove all personal property from the storage location at Nu-Sheen Enterprises and place same in location in Barnsdall, Oklahoma, all at Stoabs expense.

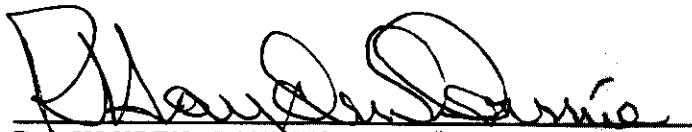
8. That Defendant, FDIC, shall have ownership of all air conditioners, walk-in coolers, booths, and exhaust fans, and may obtain same from the storage in Barnsdall, Oklahoma, within 48 hours of their request to Stoabs. The balance of all personal property shall be owned by Stoabs.

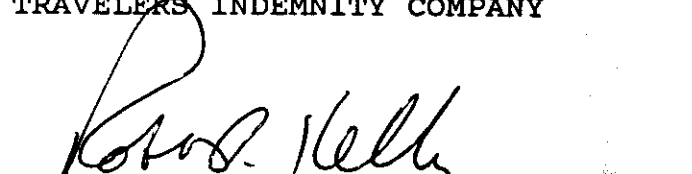
9. That all attorney fees and costs during this action shall be borne by each individual party as said costs have been expended.

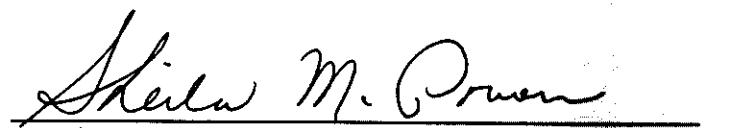
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above stipulations are incorporated herein in this Order as if fully setout and made the Order of this Court.


JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:


R. HAYDEN DOWNIE, OBA# 2466
MAIN & DOWNIE, P.C.
Galleria Tower I, Ste. 520
7130 S. Lewis Ave.
Tulsa, OK 74136
(918) 494-4050
ATTORNEYS FOR PLAINTIFF,
TRAVELERS INDEMNITY COMPANY


Robert P. Kelly, Esq., OBA #4939
KELLY & GAMBILL
P.O. Box 329
Pawhuska, OK 74056-0329
ATTORNEYS FOR DEFENDANT,
J.F. STOABS & SONS, INC.


Sheila M. Powers, Esq., OBA #13757
BOESCHE, McDERMOTT and ESKRIDGE
100 W. 5th, Ste. 800
Tulsa, OK 74103-4216
ATTORNEYS FOR DEFENDANT,
FEDERAL DEPOSIT INSURANCE CORPORATION

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Richard L. Lawrence, Court Clerk
U.S. DISTRICT COURT

MICHAEL COOMBES,

Plaintiff,

vs.

SAMISSA HEALTH CARE
CORPORATION,

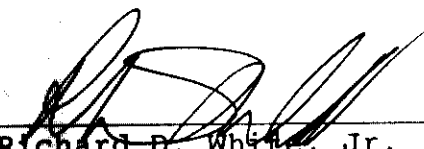
Defendant.

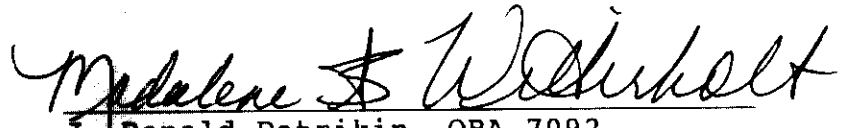
Case No. 92-C-146 E

FILED ON DOCKET
DATE MAR 11 1993

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the plaintiff, Michael Coombes, hereby stipulates with the defendant, Samissa Health Care Corporation, that this action shall be dismissed with prejudice. Each party is to bear its own costs and attorney fees.


Richard D. White, Jr.
White & Reno
Suite 510
111 W. Fifth Street
Tulsa, Oklahoma 74103
ATTORNEYS FOR PLAINTIFF
MICHAEL COOMBES


J. Ronald Petrikin, OBA 7092
Madalene A.B. Witterholt, OBA 10528
CROWE & DUNLEVY
A Professional Corporation
Suite 500
321 South Boston
Tulsa, Oklahoma 74103-3313
(918) 592-9800
ATTORNEYS FOR DEFENDANT
SAMISSA HEALTH CARE CORP.

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 10 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Dwight Baugh, et al,
Plaintiffs,

v.

Great Northern Commodities, Inc,
Defendant.

Case No. 89-C-637-E

ENTERED ON DOCKET
DATE MAR 11 1993

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 30 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 10th day of March, 1993.


United States District Judge

ENTERED ON DOCKET

DATE MAR 11 1993

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LOIS M. SKIPPER,

Plaintiff,

v.

LOUIS W. SULLIVAN, M.D.,
SECRETARY OF HEALTH AND
HUMAN SERVICES,

Defendant.

Case No. 91-C-52-E

1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 10 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER


The court has for consideration **the Report** and Recommendation of the Magistrate Judge filed February 1, 1993, in which **the Magistrate Judge** recommended that claimant be found entitled to a period of disability commencing on May 18, 1987 and to disability benefits under §§ 216(i) and 223 of Title II of the Social Security Act, 42 U.S.C. §§ 416(i) and 423, respectively, and that the **Secretary** be ordered to compute and pay benefits accordingly. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of **the record** and the issues, the court has concluded that the Report and Recommendation of the **Magistrate Judge** should be and hereby is affirmed.

It is therefore Ordered that claimant is found to be entitled to a period of disability commencing on May 18, 1987 and to **disability** benefits under §§ 216(i) and 223 of Title II of the Social Security Act, 42 U.S.C. §§ 416(i) and 423, respectively, and the Secretary is ordered to compute and pay benefits accordingly.

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Dated this 10th day of March, 1993.



JAMES D. ELLISON, CHIEF
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MR. STEVE BROWN,

Petitioner,

vs.

MR. DAN REYNOLDS, et al.,

Respondents.

No. 92-C-760-E

MAR 10 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE MAR 11 1993

ORDER

Petitioner filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, raising inordinate delay in the adjudication of his state direct appeal as his only ground for relief. Petitioner has sent a letter to the court stating that the appeal has recently been decided and his conviction affirmed by the Oklahoma Court of Criminal Appeals. In his letter, Petitioner asks if he should now file another § 2254 action, and if so, he asks the court to send him the appropriate forms.

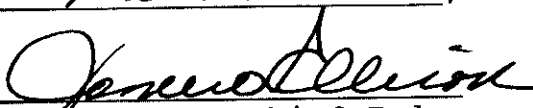
Because his appeal has been decided, Petitioner's claim regarding delay is now moot, and the court shall dismiss this action accordingly. Petitioner may now file a new action raising substantive grounds for relief if he so wishes. The Clerk shall send him the appropriate forms.

IT IS, THEREFORE, HEREBY ORDERED that:

1. Petitioner's application for a writ of habeas corpus is **DENIED** without prejudice and this action is **DISMISSED**.

2. The Clerk of the Court shall send Petitioner the appropriate habeas corpus and in forma pauperis forms.

SO ORDERED THIS 8th day of March, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAR 11 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FDIC, as Manager of the
Federal Savings and Loan
Insurance Corporation
Resolution Fund,

Plaintiff,

vs.

No. 91-C-677-E

ROBERT S. COPE, and
CHARLIE MITCHELL,

Defendants.

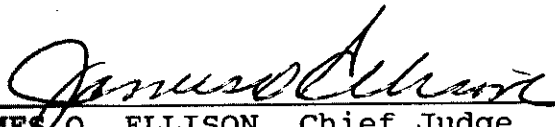
ENTERED ON DOCKET
DATE MAR 11 1993

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within 45 days that settlement has not been completed and further litigation is necessary.

ORDERED this 10TH day of March, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

J. LOUIS MCALPINE,
Plaintiff,

vs.

DICK MOLPUS, JOYCE HAZELTINE,
and MAX CLELAND,

Defendants.

No. 92-C-60-E

FILED

MAR 11 1993
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

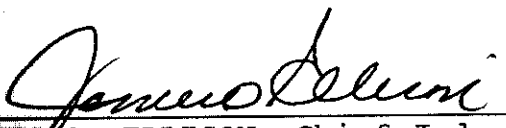
ENTERED ON DOCKET
DATE MAR 11 1993

ADMINISTRATIVE CLOSING ORDER

The Court has been advised that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within 30 days that settlement has not been completed and further litigation is necessary.

ORDERED this 10th day of March, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

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